The Ethical Aspects of the National Origins Act

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THE ETHICAL ASPECTS OF THE NATIONAL ORIGINS ACT

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CHAPTER I
THE ROOTS OF THE NATIONAL ORIGINS ACT

An integral part of the history of the United States is its immigration policy, the problems of which have been closely identified with the growth and development of this country. The policy, which has been widely discussed for the past twenty years and which today is the basis of a vital issue in the consideration of the treatment of some of our Allies, has its roots in the earliest colonial times. The colonial governors were frequently plagued by "foreigners" who sought admission into the newly founded colonies because of political, economic and religious difficulties which beset them in the land of their birth. Political difficulties had their inception in the ever-growing desire for representative government against the prevalent system of autocracy in which inequality was the keynote and despots the rule. The immigrants envisaged themselves as a part of the mild governmental system which would guarantee political and civil rights to all. The economic conditions in the colonies were the exact opposite of those in the mother country; land in Europe was expensive, whereas in America large tracts could be had for the payment of quit rents. Consequently, land was the greatest attraction since it was considered the basis of society and with it were associated political privileges and social rank. Labor was cheap in Europe, while the colonies offered many opportunities for the betterment of pecuniary conditions. Of the three difficulties which confronted the dissatisfied Europeans, that dealing with religion was
greatest. They were besieged at home by persecution and intolerance, and they sought a refuge wherein they might serve God according to the dictates of their conscience.

Since conditions in Europe were decidedly unfavorable, it was but natural that the dissenters would be desirous of bettering their lot in a country whose numerous advantages would greatly benefit their political, economic and social status. So numerous were the immigrants that early in the seventeenth century legislative acts to restrict immigration had to be passed. In 1639 the Pilgrims of Plymouth passed a law for the removal of foreign paupers. Pennsylvania, too, placed a duty on persons convicted of heinous crimes and imported into the Province. Opposition voiced itself against free admission of foreigners into the Middle Atlantic Colonies where numerous paupers and criminals had taken refuge. Massachusetts feared the loss of her integrity as a Puritan Commonwealth because so many Dutch, Scandinavians, Swiss, Germans and French were settling in the Colony. Consequently, the General Court in 1639 passed a law prohibiting any town person to entertain a guest for a period longer than three weeks without the permission of the authorities.¹

The non-assimilation argument which figured so conspicuously in the Immigration Act of 1924, had as a precedent an act of colonial legislation passed in Pennsylvania in 1727. The colonial governor was apprehensive lest the large numbers of foreigners, ignorant of the language and settling in groups, would constitute a foreign bloc.

Accordingly the legislative act of that year stipulated that ship owners bringing immigrants had to declare whether they had permission from the court of Great Britain and were likewise obliged to provide a list of all passengers and to state their intentions in coming. For their part, the immigrants were required to take the oath of allegiance to the king and to promise fidelity to the governor of the Province.² Despite the fact that the law remained in force for a number of years, its provisions were not adhered to; accordingly, in 1729 a payment of forty shillings was demanded by law to discourage the coming of undesirables. In addition another regulation intended to keep the sick and the diseased from the colonies was passed which provided that ships dock a mile from the city in order that the passengers be examined by the port physician.³

The laws cited above are but a few of the many which were passed by colonial legislatures for the purpose of determining the types of persons who would be acceptable in the colonies. From them it follows that the early Americans were not opposed to number but to quality. It is likewise obvious that many of the stock arguments used today against immigration originated during the colonial period.

However, the infirm, criminals and paupers were not the only classes discriminated against, since members of certain religious sects were barred from the various colonies. New England was so strict in this respect that there was no necessity of passing other restrictive

³ Garis, 15.
measures. The welcome extended by colonial governors was not all-embracing, since it was intended for "respectable Englishmen and staunch Protestants." Consequently, colonial records show a definite tendency to restrict Catholic immigration. Maryland in 1699 passed a law entitled "An Act for Raising a Supply toward defraying of the Publibbck Charge of this Province and to prevent too great a number of Irish Papists being imported into this Province." The colonies were fairly well agreed on their policy of exclusion of Catholics, and various measures were used to enforce it: "a duty on Irish Catholic servants, a positive prohibition of the Roman worship, a double tax on their lands, and the abjuration oath which practically excluded members of this faith unless they chose to break their vows. The laws thus far considered were the products of the individual colonies. In accordance with the spirit of this legislation the Congress of the old Confederation on September 16, 1788, unanimously adopted the following resolution: "Resolved, That it be, and it is hereby recommended to the several states to pass laws for the preventing the transportation of convicted malefactors from foreign countries into the United States." The power of Congress regarding the immigration question was disputed, because popular belief held that the power of immigration regulation belonged to the state through the authority of the Constitution. There was considerable controversy on this issue, and numerous cases regarding federal and state control were taken to the

4 Ibid., 16.
6 Quoted in Immigration Restriction by Roy L. Garis, 22.
Supreme Court, which successively granted the power to the federal Congress rather than to the individual state.

Legislative acts which were for the most part insignificant continued to be passed; however, the first federal immigration regulation became a law on March 2, 1819. Its importance lay in the stipulation that at the port of landing a full and complete report of the passengers was to be made by the ship's officer. The information required was the name, age, sex and occupation of each voyager. These manifest sheets have since been the source of information and were the first official statistics to be collected. Another provision of the same law governed the number of passengers who might be carried on each ship; the necessity of this stipulation is evidenced from the many accounts of the evils resulting from overcrowding. A third provision required an adequate supply of food for each of the passengers.

Bills regulating certain phases of immigration were passed from time to time; but, for the most part, their significance was slight. However, the year 1882, which Fairchild regards as the landmark in the history of immigration, was important for a number of reasons: it was the peak year for immigrants from the Scandinavian countries as well as from the United Kingdom; there was an insignificant number from Italy, Austria-Hungary and Russia; the immigrant total that year was 788,992, a figure not reached again until 1903. Moreover, this year marked the actual beginning of federal legislation of immigration and the passage of the first general immigration law. This Act of August 13, 1882, provided for a list of excluded classes and imposed a head tax of fifty
cents which set a precedent for the per capita tax of the present. The sum thus collected was to be used to defray the expenses of immigration regulation and to relieve the wants of the needy immigrant. Another stipulation of this legislation extended the excluded classes to include lunatics, idiots and persons likely to become a public charge. The expense of the return voyage of any of these excluded aliens was to be paid by the owner of the vessel which brought them. According to Garis, this Act was an important step forward—"the first one of any real importance, either state or national." 7

In the light of present day history the year 1882 is consequential because of another piece of legislation which has become a controversial subject among leaders in the present world crisis. The law commonly known as the Chinese Exclusion Act was officially approved on May 6, 1882. It denied admission for ten years to Chinese laborers, skilled or unskilled, as well as those employed in mining. The violation of this law was punishable by deportation, and the owner of the vessel was subject to a fine of not more than $500 for each laborer; in addition to the fine, a year's imprisonment might be added. Another stipulation of the same regulation denied citizenship to Chinese. In 1892 the law was extended for another ten years, and the Chinese Exclusion Act of 1904 combined all laws then in force and not inconsistent with treaty obligations.

Other orientals figured prominently in the legislation of this period, during which the complete exclusion of Japanese laborers was

7Ibid., 89.
demanded. Moreover, the President was empowered by passport provision to refuse admission into the country of any person seeking entrance by way of Canada, Mexico, the Canal Zone or insular possessions. Accordingly, the law of March 4, 1907, excluded Japanese or Korean laborers, skilled or unskilled, who had received passports to go to Mexico, Canada or Hawaii. This regulation produced the desired effect and excluded practically all oriental laborers.8

Between 1882 and 1885 general legislative acts were passed, but these were merely additions to or revisions of existing laws. However, the Alien Contract Labor Law which was enacted in 1885 and amended in 1887 and 1888 was significant in so far as it marked the clash of issues between employer and employee with regard to the role which the immigrant was to play in the labor problem. The law was enacted almost at the demand of organized labor, particularly the Knights of Labor. Since the panic of 1873 there had been a remarkable growth in industry. Numerous conflicts between employer and employee had arisen when the former began to import larger numbers of laborers from Europe. The wage earners strenuously objected because of the low wages paid to those outside the labor unions. Consequently, February 6, 1885, saw the enactment of a law prohibiting contract labor in the United States, its territories or the District of Columbia. It declared all contracts void; imposed a fine of $1,000 for each alien being party to a contract, and masters of vessels bringing in contract laborers were to be fined not more than

$500 and could be imprisoned for not more than six months. The amendatory act of February 23, 1887, entrusted the Secretary of the Treasury with the duty of carrying out the provisions of the Act of 1885 and to provide for the return of contract laborers in a manner similar to that of excluded aliens. On October 19, 1888, the Alien Contract Labor Law was further amended to provide for the deportation of a person who entered the country contrary to the provisions of the contract labor law, at the expense of the importing vessel, or, if the laborer came by land, at the expense of the person contracting for his services.9

Subsequent years witnessed the passage of still further revisionary measures, all of which were intended to protect the country from undesirable aliens. There were in the first decade of the twentieth century other projects launched to provide for a more specialized handling of the problem. Accordingly, in addition to other provisions, the law of 1903 created a Department of Commerce and Labor, and the Commissioner General of Immigration was to be transferred to the new department. The Act of June 6, 1906, changed the name of Bureau of Immigration to that of Bureau of Immigration and Naturalization. By the provisions of the law of this year immigration officials were required to keep detailed information concerning aliens arriving in the United States. Another step in the direction of the investigation of the immigration problem was taken when the authorization of an Immigration Commission was officially provided for by Congress in the Act

9Garis, 93.
of February 10, 1907.

The necessity for a thorough examination of the immigration problem had been felt in a particular way since 1882, which year, authorities maintain, marked a fair beginning of the so-called "new immigration;" that is, the ingress of aliens from the countries of southeastern Europe. Before that significant year the immigrants for the most part had come from northwestern Europe, and the problem of assimilation had been slight because of the similarity of racial stocks. Just as in 1727 in Pennsylvania there was felt the danger of disunity because of the vast numbers of foreigners pouring into the country, so in the United States from 1882 onward leaders fancied that they saw the impending dissolution of the country because of the non-assimilable aliens from southeastern Europe. Such a problem demanded a satisfactory solution, and various expedients were proposed. The restrictionist succeeded in putting an immigration bill before the House in June, 1906. Section thirty-eight of this measure proposed a literacy test as a means of stemming the tide of aliens. Anti-restrictionists, on the other hand, attempted to defeat this proposition, substituting in its stead the idea of a commission "which shall make full inquiry, examination and investigation into the subject of immigration."\(^{10}\) This legislation with the amendment passed both the House and the Senate.

The Federal Commission of Immigration, which consisted of three members from each branch of Congress and three representatives of the general

\(^{10}\) Fairchild, 389.
public selected by the President, worked four years and spent $900,000 in the preparation of its report which, it has been said, was so detailed that it could not be crowded on to President Eliot's five-foot shelf. An important result of the labor of this selected group was the unanimous sanction of the restriction of immigration by means of a literacy test. Specific recommendations concerning other phases of the problem were made. So diversified were these that a brief consideration of a few of them is pertinent to the present problem. Aliens who were not admissible to the United States were to be turned back at ports of embarkation. The law then extant regarding the prevention of criminals from immigrating was inadequate with reference to transportation. The investigation further demanded that special care be taken in the selection of immigrants so as to make the problem of assimilation easier. In general the legislation concerning the admission of aliens should be based primarily upon economic or business considerations touching the prosperity and economic well-being of our people.11

The Commission made a detailed investigation of the labor situation, the result of which showed an oversupply of unskilled workers in basic industries. To counteract this problem it was advised that a sufficient number of aliens be debarred to produce a marked effect upon the present supply of labor. In the matter of excluding these individuals, consideration was to be given to their personal qualities and habits, because these constituted salient factors in the problem of assimilation.

With the conclusion of the examination, the investigators submitted

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the following methods for restricting immigration: the exclusion of those unable to read or write in some language, the limitation of the number arriving each year to a certain percentage of the average of that race arriving during a given number of years, the exclusion of unskilled laborers unaccompanied by wives or families, the limitation of the number of immigrants arriving annually at any port. The majority of the Commission favored the reading and writing test as the most feasible single method of accomplishing their aim.12

At first glance it would seem that the Federal Immigration Commission created in 1907 had spent four years and $900,000 in a very worthwhile pursuit, and that there was ample justification for its being termed "the Bible of the immigration question." However, research into the actual accomplishment of the group does not substantiate this claim. Evidence has it that this special board of investigators conducted all its inquiries in terms of race and adopted as its ultimate conclusion or assumption the view, unproven by the group, that the new immigration, unlike the old, requires restriction and not merely regulation. This fact was determined to a great extent by the number in the various groups of old and new immigrants who were naturalized. Hence, naturalization determined the question of preference as well as the quality of assimilation. The results of the investigation coincided with public opinion; consequently, there was no protest.13

Since the factor of residence "ten years or over" was important

12Ibid., 14.
enough to warrant preference for the various groups, it is worthy of consideration. The Commission granted the probability that the male employee from whom it derived its information had been in the country longer than ten years. The factor that 80.5 per cent of the older races had been in the country over ten years, while only 38.9 per cent of the newer races had been here that long, does not seem to have entered into the calculations of the members of the Commission.\textsuperscript{14} Unbiased authorities readily detected the fallacy of the argument which based so much on the time of residence in this country. Because the new immigrants had come at a time when the market was overstocked, they had to take whatever work was available. In many instances the type of work was as foreign to the alien as was the country to which he had come; consequently, his first obligation was to adapt himself to the changes in his social and industrial life. Only then would he be able to give consideration to his civic responsibilities.\textsuperscript{15}

Another consideration seemingly overlooked is that of the different economic conditions into which the immigrants came in the third quarter of the last century and those into which they came later. Those who sought residence before 1882 were in a position to settle down on farms secured at low cost, while foreigners who entered after that significant year were forced to go into mills, mines, shops and railroad plants. Professor Commons, commenting on this fact, says: "it is not so much a difference in willingness as a difference in opportunity. In course of

\textsuperscript{14}"Americans by Choice." Survey. February 15, 1922, 817.
\textsuperscript{15}"Immigrants Old and New." Survey. February 15, 1922, 818.
time these differences will diminish and the Italian and Slav will approach the Irishman and the German in their share of American suffrage.¹⁶

The Survey has drawn a number of conclusions from an analysis of the report of the Federal Immigration Commission of 1907. In the first place the examination destroyed the theory that changes for the worse in recent years were a result of the inherent character of immigration. Analysis revealed further that the difference between the old and new immigration is not an inherent racial quality but rather a difference in the political, social and economic conditions at the time of migration. Ample evidence proved that the controlling factor in the report was based on length of residence, while actual facts showed that the interval between the immigrant's arrival and petition for naturalization has been longer than has been generally supposed. This is true of all immigrants, not necessarily of those classed as "new," for the average immigrant regardless of race does not concern himself with political privileges. Substantiating this same idea is the fact that an "old" or "new" immigrant shows a slower desire for citizenship while he is employed in poorly paid industries. Both individual interest and rate increase as the immigrant improves socially and economically.¹⁷

As the work of the Immigration Commission was so eminently successful in the opinion of authorities, and since its findings, according to Garis, "constitute a fair analysis of a problem which had hitherto been

¹⁷ Survey. February 15, 1922, 821.
more or less speculative," it was not surprising that their recommenda-
tion of the literacy test as the most feasible means of restricting
immigration was acceptable in circles where the non-assimilation problem
was assuming such tremendous importance. As early as 1896 Senator Lodge
had broached the subject of a literacy test, and restrictionists heartily
favored it since they saw in it a "quantitative reduction of the immi-
gration stream." Many of its advocates considered it a boon for the old
immigration, for they believed illiteracy more prevalent in southeastern
than in northwestern Europe.

That there was opposition to the literacy test is evidenced in the
fact that from Senator Lodge's proposal in 1896 to its passage in 1917
there were sixteen record votes in either the House or the Senate on
bills embodying some kind of literacy test, and each time the measure
passed by more than a majority. Four times the Senate and the House
together passed legislation containing the provision of a literacy test,
and each time it was vetoed by the President: Cleveland in 1897, Taft in
1913, and Wilson in 1915 and again in 1917.18

The Republican platform of 1896 urged: "for the protection of the
quality of our American citizens and of the wages of our workingmen
against the fatal competition of low priced labor, we demand that the
immigration laws be thoroughly enforced and so extended as to exclude
from entrance to the United States those who can neither read or
write."19

The Democratic platform of the same year recommended that "the most

18 Garis, 124.
19 Cavanaugh, 16.
efficient way of protecting American labor is to prevent the importation of foreign pauper labor to compete with it in the home market."20

Though these were the sentiments of influential party leaders, they were not those of the Chief Executive. When the legislation reached his desk, he promptly vetoed it on the grounds that

A radical departure from our national policy is here presented. . .

A century's stupendous growth, largely due to the assimilation and thrift of millions of sturdy and patriotic adopted citizens, attests the success of this generous and free-handed policy, which, while guarding the people's interest, exacts from our immigrants only physical and moral soundness and a willingness and ability to work.21

One of the most forceful arguments which Cleveland gave for his rejection of the literacy test was the inconsistency in the belief that the quality of the immigrant was undesirable since the same thing had been said of immigrants who with their descendants were then numbered among the best citizens of the country. Another reason which he deemed worthy of consideration was the falsity of the theory that the United States would be protected against the evils by limiting immigration to those who can read and write twenty-five words of the Constitution. It was Cleveland's belief that violence and disorder did not originate among the illiterate, but that the real source of danger came from the educated agitator who made the illiterate his victim.22

Taft in 1913 failed to see the merits of a bill which sought to lessen the number of aliens by subjecting them to a literacy test. In

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20Ibid.
21Senate Document 185, 54 Congress, 2 session.
22Ibid.
informing the Congress of his disapproval he said:

I return herewith without my approval S3175. I do this with great reluctance. The bill contains many valuable amendments to the present immigration law which will insure greater certainty in excluding undesirable aliens.

But I cannot make up my mind to sign a bill which in its chief provision violates a principle that ought, in my opinion, to be upheld in dealing with our immigration.23

Undaunted by three presidential vetoes, the proponents of the literacy test added it again as one of the provisions of the Immigration Law of 1917. Once more President Wilson rejected it, but this time it was passed over his signature by a majority vote in both the House and Senate. The clause relating to the test provided for the exclusion of all aliens over sixteen years of age, physically capable of reading, who cannot read the English language, or some other language or dialect, including Hebrew or Yiddish. The immigration inspector was provided with the requisite material prepared under the Secretary of Labor. Each test had not less than thirty nor more than forty words in ordinary use printed in legible type in one of the various languages or dialects of the immigrant. The alien was granted the privilege of designating the language in which he wanted to take the test.24

Notwithstanding the fact that the literacy test became a law without President Wilson's approval, his reasons for rejection are well worth considering:

Restrictions like these adopted earlier in our

23 Senate Document 1087, 62 Congress, 3 Session.
24 Cavanaugh, 16.
history as a Nation, would very materially have altered the course and cooled the humane arders of our politics. The right of political asylum has brought to this country many a man of noble character and elevated purpose who was marked as an outlaw in his own less fortunate land, and who has become an ornament to our citizenship and to our public councils. The children and compatriots of these illustrious Americans must stand amazed to see the representatives of their Nation now resolved in the fullness of our national strength and the maturity of our great institutions turning such men back from our shores without test of quality or purpose. It is difficult for me to believe that the full effect of this feature of the bill was realized when it was framed and adopted, and it is impossible for me to assent to in the form in which it is now cast.25

Because the literacy test had been such a controversial issue since 1896, it will be well in the present study to consider some of the opinions of its proponents and opponents. Of the former the American Federation of Labor voiced complete approbation of the measure. Their secretary Frank Morrison maintained that every employer wanted two men for every job in order to keep wages down. He added further that the standard wages for skilled and unskilled laborers were the result of many years of organized work and that the Americans were not able to support their families on wages accepted by foreigners without lowering their standards of living.26 Hence, the bars erected by the literacy test would be a protection against the evils just cited. The view taken by organized labor corroborates the idea now held by many opponents that the immigration question is an economic one and has come to be regarded as something of a gentlemen's agreement.

25 House Document 1527, 63 Congress, 3 session.
Fairchild, a reputed authority on the subject of immigration, was an ardent advocate of the literacy test since the "poor quality of the immigrant" had been a menace to society since 1830. The defects noted were criminality, pauperism and Catholicism.

While it is probable that the last of these considerations outweighed all the others among the motives which led to the formation of the Native American and Know Nothing Parties, yet for obvious reasons it could not receive full and frank expression and in the anti-immigration agitation of the thirties, forties, and fifties, particular stress was laid upon pauperism.27

While the question of the literacy test was being warmly contested in Congress, Grace Abbott, whose knowledge of the subject makes her an authority, reiterated the same idea as that set forth by Fairchild, namely, that much of the demand for a literacy test both inside Congress and out could be traced to religious bigotry.28 These two comments are valuable not only in relation to their bearing upon the literacy test but likewise in connection with later immigration laws, for there are many who hold that prejudice has been the keynote in determining the policy of immigration in the United States.

Those who viewed the literacy test unfavorably were numerous, and their arguments were based on fact and sound logic. They maintained that to the same extent illiteracy was a menace to the country, the literacy test was of value. The charge that illiteracy was an index to undesirable attributes was founded less on statistics than upon sentiment; and, despite the fact that the Immigration Commission had made this


imputation, there was no basis of substantiation. It has come to be recognized as an established fact that illiterates, like literates, are neither all good nor all bad, and districts in which illiteracy prevails are oftentimes centers of industry. In these districts the illiterates as a group have created no problem but have found work and made a living. The country has assimilated them from the beginning, at which time illiteracy was far more prevalent than at the time of the passage of the Burnett Bill with its provision for a literacy test.

With justification can it be said that the illiterate scare was something new with no sanction other than to serve as a cloak to exclude immigrants who were undesirable for reasons other than inability to read and write. It was based on the idea of universal education which is intended to equip individuals to make use of their environment. Necessity has taught this to the illiterates. While education increases efficiency it likewise increases wants and gives a distaste and dissatisfaction for the simple things of life. Education creates a scarcity of farm workers and manual laborers and produces an overabundance of applicants for office positions.

We cannot run a country by fountain pens and typewriters and tables of logarithms. We need such things indeed; but we also need bone and sinew and muscle; and unless we had the bone and sinew and muscle of these foreign illiterates to draw from, we would soon have very little for the fountain pens and typewriters to do. We have in this country no landed peasantry; for each generation of peasants become not the parents of other peasants but of lawyers, doctors and trained nurses; and unless the supply of peasants is kept up from abroad, our gardens will soon be weed patches and our sewers choked.
with dirt. 29

The unfairness of the literacy test as a norm for judging the desirability of an immigrant is evident from the fact that many of the European countries from which the immigrants came had not provided school facilities. In many of these lands illiteracy was deemed a virtue rather than a badge of reproach. Particularly was this true in the event of a dominant nation's control over a weaker state. Thus, for a Pole to use his native language in a formal document was an offense punishable by exile by Russia, the dominant nation which had as its purpose to eradicate any semblance of nationality of the Poles. 30 These facts have indicated that illiteracy indicated a lack of opportunity or the presence of political oppression rather than a lack of intelligence. Corroborating this statement President Wilson said:

I cannot rid myself of the conviction that the literacy test constitutes a radical change in the policy of the nation ... In this bill it is proposed to turn away from tests of character and of quality and impose tests which exclude and restrict; for the new tests here embodied are not tests of quality or character or personal fitness, but tests of opportunity. Those who come seeking opportunity are not to be admitted unless they have already had one of the chief opportunities they seek, the opportunity of education. The object of such provision is restriction not selection. 31

When the Burnett Law of February 1, 1917, is considered as an important piece of immigration control consisting of thirty-eight sections, it will at first appear that undue stress has been placed upon

31 House Document 1527, 63 Congress, 3 session.
the literacy test in the present problem. However, in view of the fact that the problem of this study is to consider the ethical aspects of the National Origins Act, it seems justifiable that detailed consideration be given the legislation which preceded the percentage plan by a few years, since the two are closely related in principle.

One other of the thirty-eight provisions of the Burnett Law, that of the "geographical limitations" clause, should be considered here because of its relevance to the National Origins Act. This provision in the law of 1917 marked certain artificial boundaries from which immigration to the United States was forbidden. These sections included central and west central Asia, India, Siam, French Indo-China, parts of Afghanistan, Baluchistan, Arabia and most of the South Sea Islands. This stipulation was significant because it supplemented the racial discrimination of the Chinese Exclusion Act. Moreover, it was the first direct introduction of the principle of group selection into the general immigration law.31

Thus the Burnett Bill of 1917 by two of its provisions set the precedent for the type of legislation which would be necessary to stem the tide of immigration after the World War. It was natural to expect restriction along the same line, and the National Origins clause in the Immigration Act of 1924 came as no surprise to those who had closely followed the trend of thought in restrictive immigration laws.

32 Fairchild, 391.
CHAPTER II

THE NATIONAL ORIGINS ACT

Because of the entrance of the United States into the World War in 1917 the Burnett Law, often called "the basic law of United States immigration," had had little time to function and to show its worth as a medium for restricting the influx of unwanted foreigners. With the end of the conflict came the more complicated problem of handling the vast number of Europeans who planned to seek refuge in the United States. It was felt by congressmen that the laws heretofore enforced were not sufficiently stringent to withstand the large number of aliens who desired to enter the United States; for consular reports from various European officials indicated a pressure so great that, without some more rigid law, immigration would be limited only by the capacity of the steamship.\(^1\) The reasons for emigrating on the part of so many people from war-torn Europe were mostly of an economic nature. Since 1890 the immigrants had shared our wealth and prosperity, and after the war there was felt an even greater need for the financial security which the United States could offer. Europeans winced at the high taxes imposed upon them while they compared conditions existing in the United States where a scale of living and a scale of wages higher than ever before were maintained.\(^2\)

In 1920 805,228 immigrants made Congress fully cognizant of conditions existing in Europe and aware too, of the dissatisfaction of its

\(^1\)House Report 350, 68 Congress, 1 session, 2.
\(^2\)Congressional Record, 68 Congress, 1 session, v. 65, part 6, 5464.
people and their plans for betterment. This realization made the need for protection ever more urgent. It was unfortunate that the World War had overemphasized nationalism to such a degree that the immigration legislation was unduly influenced by group solidarity and loyalty which demanded group selection rather than restriction.

In order to meet the emergency Congress passed on May 21, 1921, a makeshift and temporary law which was to terminate July 1, 1922. The law was based upon a percentage plan which provided for the entrance of 3 per cent of the number of foreign born representatives of each nationality resident in the United States and counted in the census of 1910. The question of nationality was to be determined by the country of birth. While the measure produced its main objectives in the way of limiting numbers and favoring immigrants from northwestern Europe, there were many cases of individual hardship which attracted wide attention and sympathy. Nevertheless, Congress was satisfied that it was on the way to the solution of the problem, and, not having definitely reached it, extended the law on June 30, 1922, for a period of two years.

The law of 1921 achieved its purpose to the degree that there was a marked decline in the number of immigrants in 1921 and 1922. This was particularly true of the number from the countries of northern and western Europe. On the other hand, however, the countries of southern and eastern Europe including Asiatic Turkey and the new nations created out of the Turkish territory since World War I exhausted and sometimes exceeded their quotas. Senator Reed of Pennsylvania quoted an Italian

Senator Reed of Pennsylvania quoted an Italian

immigration officer as saying that their board of emigration showed that more than 600,000 persons had registered as applicants for emigration under the quota law. Inasmuch as the allotment for Italy was 42,000 a year, the applicants at that time would have taken up the quota for the next fifteen years.\(^4\) There were in other countries immigrants "temporarily domiciled" awaiting the expiration of the 1921 Quota Act.

The literacy test in the Burnett Law of 1917 had indicated the attitude of the United States toward the peoples of southern and eastern Europe, and the percentage plan further accentuated this idea of discrimination. The war had germinated the belief that the permanent immigration policy of the United States should provide for immigrants whose racial stock corresponded with that of the basic population of the country in the earlier years of its existence. Consequently, in considering a permanent quota basis, the idea of the desirability of immigration from Great Britain, Ireland, France, Holland, Germany and the Scandinavian countries was of primary importance since it was from these countries that the settlers of the thirteen colonies had come. Because these people were of the same common origin and stock, they had the same ideas of liberty and freedom as well as of the principles of government. For these reasons they were easily assimilated.

On the other hand the immigrants from southern and eastern Europe, according to Fairchild, had since 1882 created not only an immigration problem but a racial problem as well inasmuch as they had altered the

\(^4\)Congressional Record. v. 65, part 6, 5464.
Nordic predominance in the American population by introducing new elements radically different from the old.\(^5\) Previous to 1900 the immigrants from these sections had constituted 9 per cent of the total number; since then it had increased to 75 per cent.\(^6\) As our critic observed:

The great majority of the present day immigrants do not, like the old ones, distribute themselves over the states, mingle with and become absorbed in the great body of American people, and build homes, cultivate lands, or, in other words become permanent and loyal American citizens. They do not have the social characteristics of the original stock. They are not assimilable and do not seem to be assimilated. They bring with them lower standards of living and labor conditions and strange customs and ideals of social justice and government, civil and religious liberty do not attract them, but they come here to enjoy our prosperity and possess the country our forefathers redeemed from the wilderness and improved as none other in the world.\(^7\)

Proponents of the measure would likely be in complete agreement with an opponent who would challenge statements similar to those just quoted on the grounds that they were at best gross generalities, but these same advocates would hasten to bring forth evidence which they would set forth as proof of these alleged generalities. The fact that Dr. Laughlin had, under the sponsorship of the Carnegie Foundation, conducted scientific research which proved, in his opinion, that the southeastern races were inferior socially and racially, would doubtless be given as an important item in the consideration of the undesirability of the Europeans

\(^6\) Congressional Record. v. 65, part, 6461.
\(^7\) Ibid.
from these parts. When adversaries were made aware of another phase of Dr. Laughlin's findings, namely, the tremendous cost to the states of the support of alien defectives, they would be made to realize what a burden these immigrants were placing on the individual states. One member of Congress who cited Dr. Laughlin's disclosures maintained that New York had spent $33,000,000 in caring for its alien insane, and statistics showed that 3½ to 4 per cent of all the taxes of all the states were spent in this manner. Such facts might have proved convincing had it not been that these statements were challenged in the Congressional debate on national origins.8

The Army tests administered during World War I provided what some considered another proof of Nordic superiority for advocates of immigration discrimination in the postwar period. Professor Brigham, who made what he deemed a thorough study of the results of the Alpha and Beta as well as the Stanford-Binet tests and wrote as a result a Study of American Intelligence, had a three-fold basis for his argument that the peoples from northwestern Europe were more desirable than those from southeastern Europe. He maintained in the first place that the Army tests were trustworthy measures of native intelligence. He found that the median scores made by national groups on the tests revealed true differences in national levels of native intelligence. His third conclusion rested on his ability to identify the portion of Nordic blood in the foreign born by the basis of nationality groups.9

8 Congressional Record. v. 65, part 6, 5464.
That these scores were factors in determining the type of immigration policy to be adopted after the war is obvious from the amount of controversy on the subject. That studies such as Professor Brigham's were accepted without analysis is equally evident since scholars have proved by an unbiased study of the results of these tests that numerous factors entered into the final scores which were given no consideration in some of the research conducted at this period which was intended to prove that the peoples from southeastern Europe were inferior to those of the so-called "Nordic" stock. The numerous fallacies found in the arguments for the Army tests will be discussed in the conclusion of this present work.

It has been seen that the percentage plan of the temporary legislation of 1921 was based upon the plan of national origins, and that its workings seemed to indicate a solution of the immigration problem. Accordingly, members of the House and Senate Committees on Immigration had studied the problem during the two years of the Sixty-seventh Congress with the result that before January 20, 1924, fifty proposals were made of which twenty or more were well defined for restriction. The Immigration Act of 1924 emerged as a result of the intensive study of the problem. The principal features of the bill were:

1. It preserved the basic immigration law of 1917.

2. It retained the principle of numerical limitation as inaugurated in the Act of May 19, 1921.

3. It changed the quota base from the census of 1910 to the census of 1890.
4. It reduced the percentage from three to two, plus a small base quota for each country.

5. It provided a method of selecting immigrants at the source rather than to permit them to come into the country and land at the immigration stations without previous inspection.

6. It reduced the classes of exempted aliens.

7. It placed the burden of proof on the alien to show that he was admissible rather than upon the United States to show that he was not admissible under the immigration law.

The new law likewise divided all immigrants into two classes, quota and non-quota; both were required to obtain a certificate, but only those in the quota class were counted to fill the various quotas.\textsuperscript{10}

Two features of the Immigration Law of 1924 characterized it as novel among all other previous legislation in immigration. The immigrant certificates, a feature of the visa system which idea originated in the House of Representatives, enabled officials to determine the number of immigrants at the ports of embarkation, for the certificates were issued at American consulates overseas. This innovation, in the opinion of authorities, gave the law the distinction of being the most humane in the history of immigration. A second factor, that of establishing the relationship between immigration and eligibility to citizenship constituted the proposed act the most drastic because it

\textsuperscript{10}House Report 350, 2.
reopened the controversy between the United States and the Orient. Inasmuch as these two features characterized the bill so explicitly, it will be necessary to consider in turn the reasons for the act's having been considered the most humane and at the same time the most drastic.

Under the Quota Act of 1921, there were many hardships endured because of the inability of immigration officials in the United States to determine numerical limitations in time to prevent such evils as the separation of families because of filled quotas. In line with the provisions of this bill, 20 per cent of the annual quota was permitted to come into the country in one month. A ship that arrived on the fourth or fifth day might find that the quotas had been filled by immigrants who had arrived on the first or second day. In such instance the ship would probably be required to take the passengers back to Europe at the expense of the company. Such circumstances had led to what might be termed a "race" of steamships at the beginning of each month.

. . . It is not an uncommon sight to see sometimes fifteen liners racing for New York Harbor trying to get there at one minute past twelve o'clock, each trying to get ahead of all the others, each of them wanting to be the first because it is known that the one to arrive first is more likely to have the immigrants it carries get in under the quota, and also it will have to maintain the immigrants in the harbor awaiting examination a shorter time than if it had arrived after a dozen other vessels.

. . . It is a fact that before midnight on the last day of the month steamers have lined up outside the three-mile limit with steam up and smoke belching awaiting the stroke of twelve. 11

\[11\] Congressional Record. v. 65, part 6. 5465.
In other cases the admission was determined by the initial with which the last name began. Those in the first part of the alphabet were admitted, but those whose names began with the last letters were deported because of filled quotas.

While this system of numerical limitation at the source was considered one of the most important improvements of the new law, it was not without its deficiencies since there had been no provision made for medical examination prior to getting the visa. Then too the law vested absolute authority in the consul with no provision for appeal. Congressmen readily recognized the possibility of unfairness on the part of the different consuls in the admission of immigrants, but many considered it the lesser of two evils as Senator Reed evidenced in the statement:

> I think there is always a possibility that power will be abused wherever it is put; but I would far rather trust one hundred or one hundred ten consuls to whom this power will be given to determine who will be admitted under the quota law than to leave it to be determined by the speed of the vessel or the wiliness of the captain or the initial with which a person's name begins.\(^{12}\)

The article in the Immigration Act of 1924 from which originated the idea that it was the most drastic legislation was that section which dealt with the exclusion of persons ineligible to citizenship. This issue was the occasion of a vigorous debate in Congress. One of the chief opponents of the non-admission measure was Charles Hughes, Secretary of State, who strongly advocated that the article be stricken from the bill, and that Japan be given a 2 per cent quota or about 240 persons under the 1890 census. The statesman's opposition was based on

\(^{12}\) Ibid., 5466.
the foundation that this clause was in conflict with the Gentlemen's Agreement of 1907 and the commercial treaty of 1911 with Japan. The reason for the former had been the rapid increase in the Japanese population of California from the year 1870 onward. By the year 1907 the Japanese problem was becoming acute, and Theodore Roosevelt, who feared to offend or irritate the Japanese by exclusion, entered into negotiations to stop the immigration of Japanese laborers just as the Chinese had been stopped in 1882, by the Chinese Exclusion Act. By the Gentlemen's Agreement students and ministers were permitted to enter the United States. Theodore Roosevelt had this to say by means of explanation of the negotiation:

After a good deal of discussion, we came to an entirely satisfactory agreement. The obnoxious school legislation was abandoned, and I secured an agreement with Japan under which the Japanese themselves prevented any emigration to our country of their laboring people, it being distinctly understood that if there was such emigration, the United States would at once pass an exclusion law. It was of course, infinitely better that the Japanese should stop their own people rather than that we should have to stop them; but it was necessary for us to hold this power in reserve.13

By the treaty of 1911 signed by President Roosevelt, Japan was conceded the right of entry and residence and the leasing of land and houses for residence and commercial purposes. The champions of the 1924 legislation saw in this treaty the destruction of the safeguard erected by the Gentlemen's Agreement. These same advocates brought forth census figures which provided direct proof of the menacing increase of Japanese in California. According to these figures there were 55 Japanese residents

13 Ibid., 5803.
in 1870, 138 in 1880, 2,039 in continental United States in 1890, 23,326 in 1900, and 72,157 in California according to the census of 1920 which was reputed inaccurate since Japanese authorities conceded the figure of 80,000.\textsuperscript{14} It was believed that this increase came from three sources: the introduction into this country in violation of agreement of thousands of picture brides (mail order brides); the entrance with the approval of the Japanese government of men and women "former residents" who quickly became laborers; and students who soon after their arrival changed from their quest as knowledge seekers to common laborers. From this threefold means of entrance it was not surprising that the increase had doubled since the agreement.

While the exclusion enthusiasts saw in these facts and figures sufficient grounds for the enactment of the law barring from admission into this country those who were ineligible to citizenship, they likewise recognized their inability to act as long as the Gentlemen's Agreement was recognized. Consequently considerable research was carried on in an effort to get any available data regarding the original agreement. The Department of Labor in charge of immigration wrote in response to a request for information:

\begin{quote}
In reply to your letter of February 9, requesting that you be furnished with a copy of the so-called "Gentlemen's Agreement" in force between the United States and Japan relative to immigration, please be advised that the department is not in possession of the document in question and never has been supplied with same...\textsuperscript{15}
\end{quote}

\textsuperscript{14} Ibid., 5802.
\textsuperscript{15} House Report. 350, 7.
The fact that the agreement had never been reduced to writing but consisted of correspondence between Viscount Chinda, the Japanese ambassador, and Secretary Hay provided adequate justification for its opponents to label the Gentlemen's Agreement an "executive agreement" which was unauthorized and which invaded constitutional powers. An example of the fiery eloquence which characterized the debates in Congress is found in a portion of the speech of Mr. MacLafferty of California:

Gentlemen, what is the gentlemen's agreement? Is there a man in this room who can rise and tell me what it contains? Do I know what it is? Do any of you know what it is? No. Is it a treaty? No. Was it endorsed and ratified by the United States Senate? No. But it is an agreement which should never have been made. It was made for the purpose of preventing an increase of Japanese immigration into this country, but it has been a rank failure in this regard.16

Such thoughts as these were a fair index to the opponents' views on Japanese immigration. There were, however, others in Congress who, while they did not favor admitting Japanese to citizenship, felt that had the Japanese been put on the same plane as other nationalities and been subjected to the restraints of the quota, the number admissible each year would have been so inconsiderable as to be negligible.

While these discussions were going on in Congress, Masano Hanihara, the Japanese ambassador, wrote to Secretary of State Hughes advising him of Japan's attitude toward the pending decree:

I realize as I believe you do, the grave consequences which the enactment of the measure containing that particular provision (abrogation of the "Gentlemen's Agreement") would inevitably bring upon the

16 Congressional Record. v. 65, part 8, 8203.
otherwise happy and mutually advantageous relations between the two countries.17

The members of the Senate were greatly incensed over what they considered a "veiled threat" in the ambassador's message, and despite opposition from President Coolidge, Secretary Hughes and a number of senators, the Senate passed that section of the bill on April 18. The President endeavored to persuade the Conference Committee to which the bill was finally referred to delay its becoming operative until March 1, 1925 instead of July 1, 1924. The suggestion was rejected, and the bill was passed intact. When the President signed it, he said:

If the Japanese exclusion stood alone, I should disapprove it without hesitation. But the bill is a comprehensive measure dealing with the whole subject of immigration and setting up the necessary administrative machinery. The present Quota Act of 1921 will terminate on June 30 next. It is of great importance that a comprehensive measure take its place in order to avoid hardship and confusion. I must therefore consider the bill as a whole... For this reason the bill is approved.18

Japan as a nation issued a formal protest on May 31, 1924 in which she stated that:

It is perhaps needless to say that international discriminations in any form and on any subject, even if based on purely economic reasons, are opposed to the principles of justice and fairness upon which the friendly intercourse between nations must in its final analysis depend. The immigration Act of 1924 considered in the light of the Supreme Court's interpretation of the naturalization laws clearly establishes the rule that the admissibility of aliens to the United States rests not on individual merits or qualifications but upon the division or race to which the applicant belongs. In particular it appears that such racial discrimination in the act is

18Ibid.
directed essentially against Japanese, since persons of
Asiatic races are excluded under separate enactments of
prior dates.19

The Japanese were bent on retributive justice to the United States
for the racial insult which had been proffered them as a nation. Public
demonstrations were held in Tokyo during which five Japanese had com-
mitted hara-kiri in order to manifest the ancient Oriental method em-
phasizing the honesty of a protest. About the same time the suicide of
another Japanese in the garden adjoining the American Embassy added
further fuel to the already over-heated Japanese press. The English
edition of the Mainichi had this to say in praise of the act of suicide:

The sense of national honor and dignity is above
almost everything in the mind of the true Japanese, and
many a Japanese would gladly die rather than see his
country disgraced by an alien Power. This is best proved
by the fact that the present suicide is being mourned by
the whole nation as the death of a national hero worthy
of the name. His action, though abnormal, is surely
indicative of the deep sentiment of the Japanese
nation as a whole.20

The evidence presented should suffice to indicate the hostility of
feeling which had been aroused in Japan by the racial discrimination of
the new immigration law. The European press likewise furnished abundant
testimony of the sentiment of its people relative to Japanese exclusion.
The London Daily Mail expressed the view that the strain affected all
countries which desired international amity. The opinion that the
United States should begin negotiations to clarify the dispute was
voiced by the London Daily Express. What must have been regarded as

19 Ibid., 649.
20 "Japan's Anti-American Campaign." The Living Age. August 9,
1924, 243.
something of an aspersion on the dignity of the policy of the United
States was the London Westminster Gazette's thrust that the action might
be attributed to that "naiveté which sometimes impels the United States
to courses of action which would horrify the more sophisticated people
of Europe." The Vancouver Sun saw in the decree a menace to trade as
well as a curtailment of the development of international mutual under-
standing upon which the progress of the whole Pacific was concerned. The Echo de Paris and the Montreal Star expressed views so pertinent in
the light of the present day conflict that it has been deemed worthwhile
to quote from both in the order mentioned:

There is a lesson for us in this affair. The "Gent-
tlemen's Agreement" of 1907 and the Washington Conference
of 1921 had greatly eased the relations between America
and Japan. And now in order to vote for a useless law,
in order to reaffirm a right which no one questioned, in
order to respond to a danger which did not exist, the
Senate at Washington sacrificed the fruit of seventeen
years of diplomacy.

A very strong anti-Japanese sentiment rules the
Pacific coast. On the eve of an electoral campaign the
politicians see an advantage of flattering it. And there-
fore the foreign policy of the nation is flattened out.
Coolidge and Hughes tried to halt the movement but they
were powerless. After this why speak of the foreign
policy of the United States?

So rich are our friends across the Atlantic that
they can afford all sorts of fantasies. But there is
shown the falsity of the calculations of those French-
men who expect our American associates on behalf of our
national cause constancy in purpose and persistence in
effort which they do not even practice on their own
behalf.22

The Americans of course, think themselves as vis-a-
vis with an isolated Japan and feel entirely confident of

21 "The Japanese Ban on Americans." The Literary Digest. June 21,
1924, 18, 19.

their power to fend off that danger. Granted. But Japan will never strike alone. She will sit sullenly watching the interplay of the nations; and any other Power which should feel inclined to face the United States will have an automatic ally in Japan awaiting the opportunity. This is a dangerous thing for any nation no matter how powerful. It was the automatic opposition of France that brought down Germany. It was the automatic opposition of Italy to Austria which exploded the Triple Alliance when war came. The hatred of a nation is not a thing to be incurred lightly.23

The implication which these numerous excerpts would seem to convey is that the majority of the European nations were apparently inclined to side with Japan for several reasons. In the first place, there existed no racial bars on the Continent; in current international affairs the white, black and yellow races had the same standing. Secondly, Japan itself was responsible in large part for the sanction of the other nations in its regard in the present contention because it had become a member of world councils at which meetings it had made itself conspicuous. The United States, on the other hand, had taken less active part in these councils, and had had no part in the proceedings at Geneva. The Europeans felt that the advice given them by this country was of little value since it had failed to solve their problems from their point of view.24

Regardless of European opinion, there were members of Congress who felt that the proposed exclusion was warranted in view of the fact that the Japanese had failed to comply with the terms of the Gentlemen's Agreement, and there would seem to have been some justification in their

23 Ibid., 19.
24 Ibid.
belief. However, this phase of the immigration law dealt only with Orientals, who according to submitted evidence, had given cause for the exclusion act. Far more numerous were those Europeans who would be affected by the plan of national origins and against whom no basis charge for discrimination could be ascribed. The manner in which the latest proposal in immigration was being received in the different countries of southeastern Europe can be well exemplified by two examples. From the Rumanian Legation came the message that the government of that country viewed with much concern the Johnson Bill. While conceding the right of the United States to limit or entirely suppress immigration, it was at the same time clearly indicated that the undisguised purpose of the bill was not only the reduction of the total number of admissible immigrants but the practical elimination of immigration from southern and southeastern Europe including Rumania. The chargé d'affaires stated that on the basis of the 1890 census the Rumanian quota would be reduced to a wholly negligible number. Moreover the law would not only wound the pride of the Rumanian people but also vitally affect their commercial interests, which would prove detrimental to Rumania's chance to achieve its goal of economic recuperation.25

On December 15, 1923, was received the request from the Royal Italian Embassy at Washington for a reconsideration of the National Origins Act which concerned that country so profoundly since:

The Italian immigration, being the most recent of the migratory waves that moved from Europe to the United

States and almost completely subsequent to the year 1890, would therefore be principally restricted by the Johnson Bill.

For these reasons the Italian Government would be obliged to consider any legislation formed upon the above mentioned criterion as an unjustifiable discrimination de facto if not de jure, enacted to the detriment of a friendly nation; it is sincerely hoped that the government of the United States will use every effort in suggesting to Congress a way of not reducing to a derisory figure the immigration of a people that have contributed so much to the productivity and prosperity of the United States, and that a solution of the immigration problem may be arrived at that will not affect so harshly the pride of the Italian nation which has always had toward the American people the feelings of friendship and esteem.26

Obviously, then, the governments from the discriminated sections of Europe frowned upon the National Origins clause in the Immigration Act of 1924. The fact that a period of five years elapsed between the enactment of the bill and its becoming definitely effective would be sufficient reason to attest the belief that there were in both Houses of Congress those who shared the opinions of the disapproving Europeans as well as others who championed this method of restriction. The diverse ideas of these two groups would fill a fair-sized volume, but the explicit opinions of a few of these controversialists will suffice for the present purpose. Since the argument of assimilation was as old as the country, it was the most popular one in use during the debate; the following quotation is typical of the kind of arguments which were brought forth during the debates:

26 Ibid., 15, 16.
I believe that we can easily assimilate that number (300,000) if they are of the proper racial origins—that is to say if their origins resemble the origins of the people they will find when they get here. That seems to me the fundamental reason against discrimination in building up these quotas.27

* * *

Of course there are those who contend that the southern and eastern European immigration is superior to that of northwestern Europe and the British Isles. The answer is that it is not. For just one case in point: a ship came in from Sweden last summer with 1,000 Swedish immigrants aboard, and out of the whole thousand we had to detain only two. They were young girls whom we detained for their own protection until the next day, when their relatives called for them at Ellis Island. In the same week a ship came in from the Mediterranean with about 1,000 immigrants aboard, of whom we had to detain 500. Half of the shipload was apparently unfit for admission. Scores of them had to be deported. These two ships tell the story from the practical view of Ellis Island.28

The instance cited above was taken from a report of Harry H. Curran, United States Commissioner of Immigration at Ellis Island, and it is typical of the examples given as proof of the undesirability of the immigrants from southeastern Europe. It has been difficult to find among the many expressly stated views of members of Congress or immigration officials anything other than generalizations such as those quoted, which would provide specific verification for the charges which furnished sanction for the National Origins Act. Any unbiased student of research will find at least some semblance of logic in the arguments set forth by those who opposed the legislation as "unfair and un-American discrimination." Two examples will prove

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27 Congressional Record, v. 65, p. 6, 5469.
28 Ibid., 5476.
the truth of this statement; the first argument presented by Representa-
tive O'Connor of New York proves conclusively that the National
Origins Act is "unfair" while the second corroborates the indictment
that it is "un-American."

Now, gentlemen, for what purpose is the census taken? Should we abandon all censuses taken after 1890? Will any gentlemen rise on this floor and say that this quota was based on the census of 1890 for any other purpose than to discriminate against certain races? Why did we go back those thirty-four years—to accomplish the very purpose for which you start out—to discriminate against the immigrants of southern and eastern Europe. That is why you did not take the basis of 1910 or 1920; and you can talk about your new chart discovered this morning, and you will never convince even yourselves that you go back thirty-four years for any other purpose.29

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We people who claim to be Americans would be the first to preserve the racial superiority of America against any race—English, Swedish, German, Irish, Italian, Russian or any other. But we are not content that you should brand millions of people who are already in this country, making up a large part of our population and who contribute greatly to America and its works, and have it said to them, "You come from an inferior race. Your race is practically barred now from this country and we today regret that we let you in." That is not the America that I was brought up to love and worship. That is not the America I want to be a part of.30

The members of both houses debated long over the issue of national origins, but the law was finally passed and signed by the President May 26, 1924. It reduced the quota from 3 per cent on the number of foreign born of the various peoples as recorded in the 1910 census to 2 per cent on the basis of the 1890 census. The annual quota was to

29 Ibid., 5647.
30 Ibid., 5648.
be 164,667 until July 1, 1927 when the statute provided that the annual quota be 150,000 and that the admission of persons of any race eligible for naturalization should be the percentage of the basic figure which that nationality group bore to the total population of the country in 1920 with no country having less than one hundred. 31 Before the law could become permanently effective, it was necessary to be able to determine the basic figure which each national group bore to the total population in 1920. For this purpose a commission comprised of Secretary of Labor Davis, Secretary of Commerce Hoover and Secretary of State Kellogg was appointed to determine the "complexion of our people back in 1790" inasmuch as that census was to be the key to the basis of determining what percentage came from Britain, from Germany, from Ireland, from Italy, from Norway, from Sweden and from all other countries. The 1790 census proved to be of little value for two reasons; in the first place, half of the records of that census had been destroyed one hundred years before the commission had begun its work; secondly, the only information it provided was the name and age of the individual. The only method which could be used for determining the national origins was that of tracing spelling or sound. An example in point is that afforded by Senator Walsh of Montana who proposed the problem and received the answer quoted below:

In estimating the present population on a national origins basis, what nationality would be assigned to the ancestors of a man by the name of Smith whose name appears on the census roles of 1790?

31 Garis, 183.
It has been explained by the chairman of the board of experts that it would depend entirely upon the locality in which the name was found. If it were in certain parts of eastern Pennsylvania, for example, it would be assumed that the name was originally Schmidt and so the ancestors would be of German origin. In other parts of the country where there had been no German immigration whatever, it would be assumed that the name was British.\textsuperscript{32}

Evidence such as this makes clearly understandable the reason for the commission's finding it unreliable to establish immigration quotas on the proposed basis. They compiled a list of the inaccuracies and presented it to Congress with the result that the enforcement of the law was twice postponed in order to provide time for further study. When a third deferment was recommended, the advocates of the legislation fought it vigorously. In March, 1929, the House on the day before its adjournment voted to postpone again the law's becoming effective. The same proposal was brought to the Senate where it was filibustered and not permitted to come to a vote. Under law the President was compelled to issue a proclamation on or before April 1, 1929 declaring that the National Origins Law would become effective July 1 of that year. The proclamation was issued, but with it came the declaration of the hope that the new Congress would repeal it before July.\textsuperscript{33} The new Congress, however, did not see fit to fulfill President Hoover's desire for repeal, and the National Origins Law, the most consequential legislation in immigration history, went into effect July 1, 1929.

\textsuperscript{32} Congressional Record, 71 Congress, 1 session, v. 71, part 1, 2242.
\textsuperscript{33} Ibid., 667.
CHAPTER III

THE NATIONAL ORIGINS ACT AND CATHOLIC THOUGHT

The relationship which exists between the National Origins Act and the fundamental or natural rights of man has definite association with the subjects of migration and immigration in so far as the reasons for migrations in the earliest days of history and immigrations from a later period down to the present time are intimately connected with man's natural rights. Because of this a short general treatment of migration and immigration will preface that section of this chapter on the consideration of man's rights in the light of the National Origins Act.

Migration, or the movement of people from place to place, is as old as the history of the world. Perhaps the first record is that found in Genesis where, after the confusion of tongues, men wandered about the face of the earth. In the earliest period of migration people were motivated to change their environment because of real indigence. They pushed out into uninhabited lands without any previous planning or foresight; for, by so doing, they saw their only means of survival. However, as populations multiplied there came to be less uninhabited land so that when expansion continued to be imperative, it was necessary to seek new regions most of which were already peopled. In this event land seekers would invariably run counter claims with the

1Genesis, XI, 8.
original settlers; hence, originated the first of the now-too-familiar land wars. The earliest migrations were characterized by the fact that they moved as tribes and nations, and they brought with them whatever civilization they possessed. The later phase of population movement, that of immigration differed in this that immigrants moved in small groups as families or as individuals. They went from countries densely populated and highly cultured; but, unlike the earlier migrants, they found it necessary to fit themselves into the new industrial system and to renounce their allegiance to the country of their birth and assume a new political status in the country of their adoption. Despite these differences it is interesting to note that the same general causes which were discernible in primitive migrations are the impelling force behind the immigrant today though, of course, with varying degrees of importance and form. Then as now, the primary factor was economic brought about by population pressure which was too great for the supporting power of the soil. People likewise chose to emigrate for political reasons which were governed by a dissatisfaction with the existing government because of an unsuccessful attempt to get a rightful share in its organization, or because of oppression and lack of power. The desire to obtain religious freedom induced certain classes to seek refuge in other lands. The feeling that class distinction made progress impossible urged others to seek equality and opportunity where they might be found.

From the economic, political, and social causes cited above, it is evident that migrations were for the most part voluntary, although assisted migrations played a role of some importance in colonial
times when colonists were given bonuses either in the form of land grants or tax exemptions. The United States likewise attracted many by her offer of contract labor which made possible for even the most indigent the opportunity of bettering his condition.

Because of the collective nature of the first migratory groups which took their own civilization with them into the new lands of lower civilization, there was obviously no legal control. However, when individuals became interested in emigrating to a country whose industrial system was already established, legal control was deemed necessary. As a matter of fact the right to emigrate is of comparatively recent date, for the old theory that a man was forbidden to leave his country without the consent of his ruler was a remnant of feudal times during which individuals were considered bound to the soil. During the Great Plague in England laws were enacted to keep the people in their own parish or town. Opposition was likewise based on military necessity and on the jealousy which existed between nations which added a further incentive to keep the nation intact.2

On the other hand there were contributing factors which changed these policies of emigration. The Treaty of Westphalia gave individuals the right to emigrate for religious purposes. The westward migrations and their consequent settlement of new lands provided an incentive for emigration. The establishment of the colonial system from which the mother country reaped large dividends encouraged and sometimes enforced emigration. The eighteenth century likewise witnessed a change in

philosophic ideas and the fact, that natural rights gave individuals the privilege to go and remain in that part of the world where free opportunity was offered him, came to be recognized. Accordingly in 1824 England repealed her law limiting emigration; the same was done by other countries on the Continent.3

Conditions necessitating such repeal were present in some European countries. The industrial changes in England had been responsible for excess population coupled with an inadequate food supply. Other hunger-stricken areas sought outlets wherein the problem might be solved. Some of their inhabitants went to North and South America, to Australia and South Africa. France did not have to cope with the problem of excess population and emigration because the death rate sometimes exceeded and often equalled the birth rate. By 1850 Ireland was faced by the fact that her population had decreased by about one-half because of domestic conditions and emigrations. Germany's problem was of an entirely different nature since she was so completely organized for military purposes. Hers was the task of stringently enforcing emigration laws in order to prevent desertion from military forces.4

While many of the European nations had lost portions of their population through emigration, they had had few problems connected with immigration; consequently immigration into them was practically unrestricted. The opposite, however, was true of the United States whose population was made up in large part of its immigrants. People from

3 Ibid.
4 Ibid., 297.
northwestern Europe had been coming in large groups because of the economic, political and social reasons cited previously. Prior to 1882 the immigrant stream from southeastern Europe had been insignificant. After that date the pressure of population was felt in these regions because of the high birth rate accompanied by the relatively low death rate. Added to these economic features of the problem was the development of transportation to and from southern ports which contributed to the relief of the problem of surplus population and to the creation of the controversial issue relative to the "old" and the "new" immigrants which culminated in the National Origins Act which will now be examined from the viewpoint of the natural rights of man.

One of the fundamental Christian principles is that man has been endowed with certain rights which are intimately a part of him by reason of his being a man. These include the rights to life, to liberty, to property, to marriage, to religious freedom, to intellectual and moral education. They are the gifts of the Creator and pay tribute to man's dignity since they set him above all other works of creation. At the same time they evidence his weakness because they are intended to be means for his protection throughout life. These natural rights have their origin in the moral law which is based upon justice, and they cannot be infringed upon without incurring moral guilt. Consequently, the fact that man is in possession of these rights places his neighbor under the moral obligation respecting them.\(^5\)

Insofar as the general causes for immigration are closely allied

to man's fundamental rights, to that extent is there a relationship between the two subjects. First and foremost, a man has a right to life; therefore, his is the duty to see that life is sustained by making use of the means to further this end. In the event of excess population there results an insufficient food supply; therefore, one of the essentials for the preservation of life is lacking to a greater or lesser degree. It is therefore in accordance with the teachings on the fundamental rights of man that he be permitted to emigrate to a land in which the soil's supporting power produces adequate sustenance. St. John Chrysostom writing in the fourth or fifth century recognized this particular claim of man he said: "Are not the earth and the fullness thereof the Lord's? If, therefore, our possessions are the common gift of the Lord, they belong to our fellows; for all things of the Lord are common." Nature itself has closely bound the right to life with the right to private property inasmuch as the latter makes possible the prolongation of the former since it is from the products of the soil that subsistence is assured. Should this need be vital, the common right of use would be superior to the private right of ownership; such is the importance placed by the moral law on the natural rights of man.

The above consideration of the two rights will serve to indicate sufficiently the interrelation between the question of rights and the National Origins Act, for that legislation to be ethical would have to recognize these rights. But the provision permitting 2 per cent of the

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foreign born according to the 1890 census denied these rights to certain individuals. It is this stipulation, therefore, that has given rise to the contention that the law was unethical. Reference has been made repeatedly to the fact that after 1882 the bulk of the immigrants came from southeastern Europe, and restrictionists saw in these foreigners an inferior class, one that was not easily assimilated with the Nordic stock. Their assertions were based on statistics which proved their inferiority intellectually and socially to the Anglo-Saxon races which had peopled the United States since the time of the Revolutionary War. Accordingly, the proposed legislation should be brought to bear most heavily on the people from these sections of Europe. The Europeans' reasons for emigrating were given no place in the argument, and it is in the consideration of these reasons that the basis of the argument rests. The countries of southeastern Europe had for some time faced the problem of insufficient land for her millions of inhabitants, but the issue could not be satisfactorily controlled until improved means of transportation made the Mediterranean one of the chief routes of travel. Then the United States with its vast territory and countless other material opportunities presented the solution to the problem of excess population. Once here, the immigrant fitted into the scheme of things; and, despite the non-assimilation argument of the restriction-

7It is the writer's contention that fair legislation would have placed a 2 per cent quota on all countries irrespective of locality. If, for instance, 20,000 Bulgarians found it necessary to emigrate and the same number from Great Britain sought to better their lot in the United States, then the law to be undiscriminating in character, would enforce the 2 per cent quota on each of the two groups alike.
ists, had become so integral a part of the population that many of the divisions of the armed forces in World War I were composed largely of these so-called "hyphenates" of southeastern Europe. Came the end of the war, and the immigrant tide was higher than ever before because of the millions who were facing starvation and because of unstable governments which were creating political unrest. It was an established fact that the immigration issue at this time presented a problem to the United States. There were those who suggested that it be met by closing all ports to all foreigners alike. That proposal did not find favor with the influential group which had been advocating restriction since 1896 and had already scored in the passage of the literacy test in 1917. They achieved their goal once more in 1924 when they succeeded in passing the National Origins Act which was unethical because it discriminated against the natural rights of men in those sections of Europe where the right to life was perilled by inadequate means of subsistence, and the right to liberty by unstable governments.

Mary Antin, an immigrant and a recognized authority on the subject of immigration, has used the Declaration of Independence to prove that discriminatory legislation is unethical because it is against the rights of man which the government guaranteed in writing to protect. She laments the fact that the time is past when the immigrant was regarded as a human being, regardless of "ethnic or geographic label," entitled to life, liberty, and the pursuit of happiness. This change is attributed by Miss Antin to the difference in outlook on immigration. When the nation was young and imbued with the real meaning of the basic
law contained in the Declaration of Independence, each alien found a
refuge wherein he might find happiness. With the years, however, immi-
igration became a problem and experts were called in to solve it with
the result that the fundamental law was relegated to the background and
the country has since been guided on the subject of immigration "by the
conflicting reports of commissions, committees, anthropologists,
economists and statisticians, policy mongers, calamity-howlers, and self-
announced prophets."

...They have filled volumes with facts and figures
comparing the immigrants of today with the immigrants
of other days, classifying them as to race, nationality,
and culture, tabulating their occupations, analyzing
their savings, probing their motives, prophesying their
ultimate destiny. But what is there in all this that
bears on the right of free men to choose their place of
residence? Granted that Sicilians are not Scotchmen,
how does that affect the right of a Sicilian to travel
in pursuit of happiness? Strip the alien down to his
anatomy, you will still find a man, a creature made in
the image of God; and concerning such a one we have
definite instructions from the founders of the Republic.
And what purpose was served by the bloody tide of the
Civil War if it did not wash away the last lingering
doubts as to the brotherhood of men of different races. 8

With reference to the scientific and sociological data gathered by
experts, Miss Antin launched what is perhaps her strongest argument in
favor of man's rights. She asserts that the information produced by
reputed authorities has its place, but not on the moral side of the
problem: "By all means register the cephalic index of the alien—the
anthropologist will make something of it at his leisure,—but do not
let it determine his right to life, liberty, and the pursuit of

8 Mary Antin. They Who Knock At Our Gates. Houghton Mifflin Company,
Boston, 1914, 9, 10.
happiness."  

The Declaration of Independence is on occasion the proudest boast of every American citizen, but many are they who would regard the lofty sentiments of Mary Antin as exaggerated idealism in a woman. Besides, they would maintain that they failed to see the relationship between the principles of the Declaration of Independence and those of immigration. In view of this fact it is interesting to note that others have seen the defiance of the spirit of that cherished proclamation of the forefathers of the United States. More than that it has been alleged that the National Origins Act violated the principles of the Declaration of Independence but also the precepts of the Constitution. This charge was made by Dr. Saguntinus, who asserted that the statute amended the fourteenth amendment of the Constitution which reads:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.  

The statement that the National Origins Act amended the Constitution on legal as well as scientific grounds would be open to challenge; so much so, that the authority who instigated the charge would have to have fundamental knowledge of the Constitution as well as of its recognized interpretations before venturing to launch an attack of such moment.

9Ibid., 11.
Dr. Saguntinus seemed to have been well qualified in this respect, and he established his argument on the legal interpretation of the clause which guarantees "equal protection of the laws." This is assured when laws are imposed on all alike without discrimination against some by the arbitrary exercise of the powers of government. A further interpretation of the clause, according to the author, is founded on the fact that any classification made in pursuance of police powers must rest on a reasonable basis.

All of these statements would be granted without much deliberation, but it would be argued that the primary function of the fourteenth amendment was the care of domestic problems of citizenship and civil rights. Furthermore, Congress has power from the Constitution to legislate on matters of immigration and naturalization. It may determine likewise the number of persons who enter the United States and the conditions under which they are permitted to come. Within the jurisdiction of that assembly rests the power to prohibit all immigration for as long a period as is deemed necessary. Dr. Saguntinus in his article granted all this authority to that august body, but he stopped there in his concessions to declare forcefully: "But Congress has no authority to set up a purely arbitrary classification of candidates for admission to the United States, a classification resting upon an unreasonable and unscientific hypothesis." Inasmuch as Congress itself lacks the power of arbitrary classification, it has no jurisdiction to delegate...
that right to any other group. However, this power was delegated to a
group of bureaucrats who were commissioned to obtain the necessary data
from which the quotas for the different nations would be computed.

Inasmuch as the clause "equal protection for all" is designated as
the spirit of the fourteenth amendment, it is evident that for the
National Origins Act to constitute a violation of this spirit, it would
necessarily have to affect the citizens of the United States as well as
the future citizens. Dr. Saguntinus proved this condition to be extant
by reason of the fact that the statute required that the proportion of
the various quotas would be established by determining the national
origin of all the people of this country on January 1, 1920, and from
these figures the quotas for the immigrant groups were to be found. This
being true, the main constitutional interest centered on the present
citizens of the United States; for, since 1924 when the census of 1890
had been substituted for that of 1910, discrimination had been manifest.
Immigrants from Continental Europe had been impressed with the idea that
they were considered as belonging to inferior races, and that the new
legislation was designed to curtail the number of immigrants from the
sections of Europe from which they had come. It is reasonable to suppose
that such racial classification, such inequality would be detrimental
to the individual interests of those who were already citizens of this
country and likewise of those who had planned to be its future citizens.
Insofar as this classification rested upon "an unreasonable and
unscientific hypothesis," to such a degree was the spirit of the four-
teenth amendment violated by the National Origins Act.12

12Ibid., 16.
The proof furnished by the originator of the allegation against the National Origins Act proved to the satisfaction of authorities versed in legal knowledge that it infringed upon the Constitution, for it transgressed the precept of "equal protection of the laws." Because the whole of this argument is founded upon basic knowledge of the interpretation of the Constitution, the great majority would be inclined through lack of this knowledge to discount the gravity of the charge and the arguments advanced to substantiate it. However, further study and research conducted by Catholic authorities on the subject of national origins supplied adequate evidence which proved conclusively that the classification of immigrants was basically unreasonable in view of the method employed in determining it.

Dr. Edward F. McSweeney, a Catholic scholar, and at one time Assistant Commissioner of Immigration at Ellis Island, traced the national origins idea back to 1906 when there was made in Congress a request that the "names of heads of families" found in the first census of 1790 be published in permanent form. In this original census Thomas Jefferson had provided what he considered essential facts, namely:

1. The total number of males under and over sixteen years of age.

2. All females of whatever ages—married and single.

3. Blacks of all ages, free and slaves.13

With the year 1909 came the report requested by the Congress of 1906. This was the work of Mr. North, Director of the United States Census,  

who in his contribution published the names and the origins of the people resident in the United States in 1790. Since Thomas Jefferson, whose report was the source from which North had obtained his statistics, had made no reference to the origins of the population, it is safe to say that North interpreted names freely and divided the inhabitants into various races and into exact fractional proportions making the English about 90 per cent of the entire population. This information becomes even more interesting when a consideration is made of some of Chief Clerk Rossiter's statements concerning the first census. That gentleman maintained that the official records were no longer in existence since the British had destroyed them in the occupation of Washington in 1812. The clerk also found that the schedules sent in by Delaware, Georgia, Kentucky, New Jersey, Tennessee and Virginia were missing.\textsuperscript{14}

Notwithstanding this evidence Director North published his remarkable and far reaching report. The objective for which the report was to provide evidence was defeated in the Senate in 1911, but the information which it furnished was used by the joint immigration committees in 1924.

The idea inaugurated by the percentage plan in the temporary immigration legislation of 1921 was deemed acceptable by officials; but, before a permanent percentage plan could be established, basic statistics would be necessary to ascertain the number of immigrants from each country. The North Report, defeated in its original purpose, could be used to advantage in the present need. About this time the element of propaganda was introduced in the cause of national origins, and the

\textsuperscript{14} Ibid., 9.
English Speaking World became its official mouthpiece. Among the interesting articles which it published at this time were those written by professors of history at Columbia University. One of these men is reputed to have stated that the Revolutionary War was only an unfortunate family quarrel of no particular importance in the history of world civilization and that the motives, character and personalities of revolutionary groups were questionable. These conclusions were intended to pave the way for the North Report which would be of such basic importance in the immigration legislation of 1924. Another channel of propaganda at this time was the World's Work which took the fundamental position that in relation to government the United States was "Anglo-Saxon" and in its relation to God specifically Protestant.

While the propaganda agencies were freely functioning, the Carnegie Endowment for International Peace was contributing a lion's share toward the solution of the immigration problem. There had been for some time unpaid officials working in the government as paid agents of the Carnegie organization. These men were largely responsible for the law based on the theory that certain racial groups were inferior, and with the Carnegie endowment's support corroboratory facts were easily obtained. One of the foremost and oft-quoted authorities was Trevor an employee of the Carnegie Foundation whose population tables were published and widely circulated by that organization. Trevor, who used the North Report of 1909, gave the British and North Irish approximately 52,000,000 of the national population which number would assure the Nordicists that

15 Ibid.
16 Ibid., 10.
three out of every five quota immigrants would come from Great Britain and Northern Ireland; so that it could with truth be said that "it was not so much a Nordic law as a pro-British Law."

The Laughlin Report also figured conspicuously among the investigations conducted under the sponsorship of the Carnegie Foundation. Its author was likewise one of the paid agents of the organization. He had been in the United States Department of Labor for over a year. In this position he was able to make worthwhile investigations in the field of immigration in the United States and Europe. To these observations Dr. Laughlin added facts culled from questionnaires which had been distributed among the alien population. Notwithstanding the fact that less than half of these had been returned, the committee on investigation accepted the information as a competent contributing factor for the discriminatory legislation of 1924. Like his colleague Trevor, Dr. Laughlin approved the North Report as an accurate means by which the national origins might be calculated.

That the testimonies of the agents of the Carnegie Foundation were in large measure responsible for the National Origins Act is evident from the fact that when Senator Reed of Pennsylvania, the author of the National Origins idea, was questioned regarding the authorization for the submitted statistics, that gentleman vouchedsafed the information that the entire scheme was based on scientific study. The questioning of immigration officials as well as the committees of Congress resulted in a similar evasion of the issue of the statistical authority of the law.
An appeal made to Director Stewart of the United States Census brought this reply on June 24, 1925:

There are no figures in existence which show completely the national origin of the population of the United States. Those responsible for this legislation were well aware that the determination would have to be to a considerable extent a matter of estimate, and no exact figures are available, nor any actual enumeration possible. . . I might add that when Congress passed this Act, they had before it an estimate of the composition of the United States according to the country of origin.18

Two of the three arguments used by immigration officials and Congressional committees as proof of the necessity for the National Origins legislation were furnished from the information submitted by Dr. Trevor and Dr. Laughlin of the Carnegie Foundation. From the close scrutiny to which the source of Dr. Trevor's report has been subjected in the present work, it should be obvious that the first argument is false; so, too, is the second in view of the fact that the evidence produced by Dr. Laughlin is incomplete. Their third argument concerning Italy's population is true, but it is as unjust as the first two are false. According to statistics "based on scientific study" Italy would be denied the right to send that portion of her 42,000,000 inhabitants who desired to seek admission to the United States despite the fact that they possessed the physical and moral qualities requisite for good American citizens. Because of Italy's birth rate which was the largest of any country in Europe, she was faced with the age-old issue of surplus population and the inability to cope with it because of the few natural

18"Facts and a Fraud." Columbia. October, 1925, 5.
resources of the country. The problem assumed an even graver aspect when the European nations, following the example of the United States in the National Origins Act, denied Italian citizens "the right to labor in return for the right to live." How true is the statement of a recent observer in regard to the immigration policy: "Eligibility to citizenship depends upon skin-color and race rather than upon education and integrity." The Supreme Court in 1922 admitted guilt on this very charge when it stated specifically that "culture or enlightenment" of the people involved "are not matters which can be properly taken into consideration."  

Italy's plight was but one of the classic examples of the hardships to which the National Origins Act subjected the peoples of southeastern Europe. In examining the views of Catholics on this issue there has seemed to be a more or less general agreement among them that the basic reason for the law was discrimination. With the editor of the Catholic World this idea was no matter of conjecture, for he had Secretary Davis' own words to confirm his belief:

Good immigration laws are those that admit the largest number of Northwestern Europeans. Bad immigration laws are those that permit an indiscriminate influx from Eastern and Mediterranean Europe. That is the beginning of wisdom in this great question.  

Open discriminations were not unusual; one case in point dealt with the admission of four thousand immigrants who came on the Leviathan

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20 Ibid.
in excess of quota. Of this number two thousand were British and the other two thousand were from Eastern Europe. Secretary Davis issued a special order for the admission of the four thousand "on parole." After some delay all but three hundred of the British were admitted, and the admittance of the remaining three hundred was assured. The order was cancelled for the non-British immigrants, and they were deported. An avowed discrimination manifesto came in 1925 with the ruling of the Secretary of Labor (of Welsh origin) which permitted the immigrants from Great Britain to evade the Ellis Island inspection. Commenting on this the Commissioner of Immigration is reported to have said that "it is a deliberate scheme to scrap the millions invested in Ellis Island which will be used only for the races which are discriminated against in the 1924 Act." 

In an effort to secure material for the portion of this chapter which deals with Catholic thought, it was discovered that few contributions had been made by Catholic writers as compared with the large number of books and periodical articles offered by secular authors on the subject of immigration in the twentieth century. This fact evoked the question as to whether or not Catholic leaders had been aware of the trend of immigration legislation. However, a careful examination of their contributions dispelled all apprehension; for, though few in number, each one is the product of concentrated reflection and study. The articles which flooded the presses with restriction proponents' 

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22 Ibid.
23 Columbia. October, 1925, 5.
views came from minds which had been completely steeped in statistics which were accepted by those prolific writers at face value. Because these statistical tables became such an issue in the National Origins debate, Catholic writers made a thorough study of the origin of these statistics and found them unreliable. They have likewise shown that the Declaration of Independence and the Constitution of the United States embody principles in the field of immigration which must be adhered to if the spirit of the founding fathers is to be preserved. Though these two issues constitute the most consequential of the charges made by Catholic writers against the legislation and its proponents, others have voiced their opinions on the immigration bill itself or on various charges against the immigrant. Insofar as all these are pertinent to Catholic thought on the subject, an examination of these views is deemed in place here.

During the time of the debates before the final enforcement of the National Origins Act, the editor of Commonweal expressed his observations on the immigration plan. His first objection to it was its apparent dishonesty in the determination of quotas which gave to Great Britain and Northern Ireland so unfair a percentage of the total number of immigrants. In the editor's opinion neither country appreciated the favor nor would take advantage of it. Nevertheless, this stipulation would tend to keep out through subterfuge 35,000 potential citizens. This gentleman's solution to the Ellis Island problem was to curtail the number of immigrants admitted frankly and fairly.

Race prejudice formed the groundwork for his second objection. He
believed that the sponsors of the legislation were actuated by high-powered nationalism engendered by World War I; this charge had been made repeatedly but was never successfully refuted. An interesting observation made by this writer was that religious considerations were absent from the bill. This idea was not in conformity with the impressions of the majority of his contemporaries.

The third criticism raised by Commonweal's editor was that of the method used for computing quotas. He objected to the use of the 1790 census because of its unreliability and the obvious nationalistic tendencies. 24

That Catholic opposition also found its way into Congress is clear from the following objection sent by Mr. Bruce M. Mohlen, director of the Bureau of Immigration of the N. C. W. C.:

We protest against the principle and purpose underlying this Bill which excludes immigrants from certain countries and favors admission of immigrants from other countries. Such a policy is a distinctive and deplorable departure from our enduring traditions as a nation. Our fundamental policy is fair treatment to all nations. The proposed bill involves an evident discrimination and substantial injustice to certain particular nations. No reason of statesmanship can be advanced for its defense. Nothing can cloak the arbitrary unfairness in selecting the 1890 census against that of 1910 as a basis for establishing the immigration quotas. The process is purely mechanical designed for an ulterior purpose which cannot but result in arousing against us the enmity of other nations. 25

Dr. Laughlin's report had in it some staggering statistics

appertaining to the crime wave to which, the figure indicated, the immigrants had contributed in so large a measure. An observer who must have had first hand acquaintance with these statistics, sought an explanation to the fact that, though the number of immigrants had visibly diminished during the past fifteen years, crimes of violence including murders, robberies, hold-ups and kidnappings had more than doubled. He made another interesting comment relative to foreign names on court calendars which names, he maintained, were no indication of foreign birth, for aliases were frequently given by lawbreakers. These, in keeping with the "new" immigration trends gave up the practice of using Irish names substituting in their stead those of Italian or Slavonic derivation.26

Since the motive underlying the National Origins Act and Oriental exclusion is basically the same, it has been deemed within the confines of this discussion on Catholic thought to consider the attitude of Bishop Paul Yu-Pin, prefect apostolic of Nanking, on the subject of exclusion and discrimination. In an interview the Bishop was asked the opinion held by Chinese and all other Orientals on American racism. The Bishop replied:

The recent vote of your congressional committee on immigration, rejecting the repeal of the Chinese exclusion act comes as a deadly blow to all we had hoped for.27 You know very well what the Church taught about racism. You know the Church has always

27 The Chinese exclusion law has since been repealed, and that country is now permitted an annual quota of 105 immigrants. "House Passes Bill to Repeal Ban on Chinese." The Chicago Tribune. October 23, 1943.
opposed it. You know that in words the great leaders of the United Nations have opposed it. Yet here the legislature of the greatest of the United Nations, the one to which China looked for true understanding, reaffirms a racist law of the most insulting and stringent kind.

... No matter how friendly any of us may personally be toward you, we cannot answer for the thoughts in our countrymen's hearts. They will think the Atlantic Charter is a sham. They will think that your adherence to Christianity is an hypocrisy. And can we persuade them otherwise? 28

In the same interview the Bishop stated that the Chinese did not expect the United States to open their doors to a flood of Chinese immigrants, for they realized what an internal problem that could create. Their objection was based on the foundation that they were branded as an inferior race. The Bishop's words in this regard conveyed the idea that American racism is frowned upon by Church and State alike; and, also, that the sincerity of the country is questionable since it has failed to follow principle in an important issue such as this. The following quotation verifies this assertion:

Certainly China will keep in the fight until Japan is defeated. In this defeat, you of course will play a great part. But if your attitude of superiority continues, if the Far East becomes convinced that the United States has forfeited her moral right to leadership, and is fixed in her determination to look down upon the colored races, I can foresee only a prospect which makes me tremble at its horrors. 29

The Knights of Columbus carried on an active and effective campaign during the time of the controversy over the National Origins Act through Columbia, the mouthpiece of that organization. Its contributors,

29 Ibid.
acknowledged authorities in the field of immigration, proved to those who were really seeking the truth in the matter of the Act of 1924 that it was the product of prejudice and racial discrimination. Columbia summarizes in the following words all that the writer has endeavored to prove in this chapter:

Columbia's opposition to the 1924 act is therefore because it [the act] is based on bigotry; dependent on fraudulent statistics which have no existence in fact; contrary to the principles of democracy, morality and economics, in violation of the spirit of the Constitution, and inimical to the equality, common brotherhood and national rights of the people of the United States.30

CHAPTER IV

THE NATIONAL ORIGINS AND SECULAR THOUGHT

In examining Catholic views on the subject of National Origins it was found that the majority of the objections were based on the grounds that the principles of the legislation were contrary to the fundamental rights of man judged according to the tenets of Christian ethics. The advocates of the proposed restriction movement were motivated by a code decidedly at variance with the one which adhered to the belief that the natural rights of man are God-given. Whence came this difference of opinion in fundamental truth since the element of right is a generally accepted ethical norm which can be traced back through medieval and ancient times? \(^1\) With Thomas Hobbes of the seventeenth century evolved the idea that man's natural rights should be curbed. To this end he advanced his social contract theory by which individuals subordinated their natural rights to state power which in turn guaranteed its protection of a limited set of human rights. John Locke also favored the social contract theory, but he differed from Hobbes in this that he maintained that there were certain inalienable rights over which the state had no control. \(^2\)

In the seventeenth century the basic idea of God was replaced by the more useful concept of nature; the natural law was considered to have

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\(^1\) Brinton Crane. "Natural Rights." Encyclopaedia of the Social Sciences, v. 11, 299.

rested on the same basis as Newton's discoveries. In the same century the doctrine of human rights became involved with modern individualism. It gained momentum in the eighteenth century with the progression of the theory that the state was merely an artificial body, and that the state of nature was entirely individualistic.

With the nineteenth century came the theory of Positivism which limited knowledge to the study of experimental facts and neither affirmed nor denied anything outside of nature. To the Positivist, sense experience was the only object of human knowledge and its sole and supreme criterion.

From these different ideas concerning human rights has developed a situation in complete disagreement with Christian concepts. Rights have come to be regarded as human customs of which men generally approve. Theirs is a legal status whose sanction depends upon human legislation, a view which makes the state the creator of right.

It is evident that the originators of the 1924 legislation followed the principles cited above with regard to fundamental rights. The supposed fact of the inferiority of the peoples of southeastern Europe had been so deeply engraved on the minds of restriction advocates that discrimination against these foreigners had come to be regarded as generally approved custom. Since rights were subordinated to state control, it was but natural that laws emanating from that power would

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3 Encyclopaedia of the Social Sciences, 299.
4 Social Concepts and Problems, 34.
consider only those privileges which it conveniently included in its "limited set of rights." Inasmuch as the inalienable rights of man did not find a place in this group, there was no need of their consideration in the immigration legislation of the state.

Fairchild, that well known authority on the subject of rights and liberties, gave evidence of positivistic views in the statement "that the whole question of natural rights lies outside the field of argument. The very use of the terms 'natural' or 'inalienable' puts them in the realm of the intuitive." That gentleman's position on the immigration question is readily understood when his attitude on the subject of rights is examined; for, like many of his contemporaries, he maintained that every right which has any real bearing on human problems is socially conferred. Perhaps the most cogent and certainly the most alarming statement made by Fairchild is that "modern thinkers have come to agree, that for practical purposes, at least, the whole idea of natural rights should be thrown overboard in toto." 

From these observations furnished by a reputed expert in his field the task of reconciling the National Origins Act with the "modern thinkers" version of rights, becomes easy. Impossible, however, would be the assignment to conciliate this idea of rights with the principles inaugurated for this republic by its founders unless these very precepts are likewise to be thrown overboard and disregarded. The truth of the matter is, that following the lead of such men as Fairchild, restriction

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7Fairchild. Immigration, 435.
8Ibid., 436.
9Ibid., 435.
proponents have ignored fundamental principles. Consequently, their views have no basis in fact as the following examination of some of their opinions will prove.

Another prominent immigration authority who heartily sanctioned restriction was Roy L. Garis who, judging from his book, Immigration Restriction, seems to have put complete credence in the findings of the various committees on immigration investigation. Like so many of his contemporaries, Garis was convinced that the immigration problem was a problem of blood. "No nation can change its blood by ever so little but that it will change the very nature and the practical workings of its institution."10 Against opponents of the Nordic Myth who argued that environment was the sole determining factor that made for racial greatness, Mr. Garis used the negro as an example of a race whose inherent qualities made him inferior intellectually to the white man despite the fact that his being in an environment of the highest civilization for a period of three hundred years had not altered his position.11 In answer to his own query as to the reason why the Anglo-Saxons in the United States had accomplished so much and other races so little, Mr. Garis explained that it was due to the fact that the original stock had been fairly well preserved; for, he believed, "ideas, ideals and institutions change with its racial composition."12 Undoubtedly Mr. Garis would have been in complete accord with the opinion of Dr. Henry Fairfield Osborn who believed that education and environment did not alter racial values;

11 Ibid.
12 Ibid., 669.
he expressed his views thus;

The true spirit of American democracy, that all men are born with equal rights and duties, has been confused with the political sophistry that all men are born with equal character and ability to govern themselves and others, and with the educational sophistry that education and environment will offset the handicap of ancestry. 13

Far more radical than the ideas of Mr. Garis are those of Madison Grant who revived, in his apparently popular book, the idea of Nordic superiority propagated in the latter half of the nineteenth century by the Frenchman Arthur de Gobineau and the English author, H. S. Chamberlain. An examination of one magazine article contributed by Mr. Grant will evince the insidious nature of the propaganda that was disseminated by one individual on the immigration question. According to this authority the institutions of the United States would necessarily have to be maintained by Anglo-Saxons and other Nordic peoples in sympathy with our culture. That these cherished institutions were imperiled by the immigrant menace was feared by Mr. Grant who maintained:

Foreigners are obtaining places on the judicial bench, are serving on our juries, and above all are practicing in our courts in ever increasing numbers. The result is that our criminal law has virtually broken down, and the United States is known all over the world as the most lawless of civilized countries and a paradise for malefactors of every race. As an example, New York is probably the only city in the world where registered mail is delivered in armored cars. 14

That there is widespread lawlessness in the United States is evident, but that it can in any way be associated with the fact that there are

naturalized citizens or the sons of immigrants serving in the courts of
the land cannot be established by facts. The example of the delivery of
registered mail in armored cars is a fair illustration of the inane
arguments often used by restrictionists to arouse the unsuspecting public
to the dangers threatened by the unchecked influx of foreigners.

The decline in the birth rate of the United States has been a
subject of discussion and concern for several decades. Few other than
those of the type of Madison Grant would venture to advance the immi-
grant peril as reason for the decrease in the birth rate. Yet he
affirmed this opinion in the words:

The rate of increase of population one hundred years
ago was very high but began to show signs of abating in
the middle of the nineteenth century, simultaneously with
our expanding immigration. With the arrival of foreigners
the native American birth rate fell, and fell most rapidly
where the newcomers settled. Many close observers believe
that for every immigrant arriving one American was not
born, and that the present population would be as large as
it is now if there had been no immigration whatever. With-
out the immigration the population would have remained
homogeneous in blood, language, religion and political
ideals, all of which is not true of America today.15

Here Mr. Grant ran counter to the arguments of proponents and opponents
alike. The former maintained that it was the high birth rate among
immigrant families which would prove a menace to American institutions
inasmuch as these would in future years lose their original Anglo-Saxon
or Nordic character because of the fact that their personnel would then
be comprised largely of the "hyphenates" of the new immigration or their
offspring. Those in opposition to the restriction movement would have

15 Ibid., 349.
conceded Mr. Grant's premise that the birth rate in the United States was showing greater signs of decline as the immigration movement was expanding. But they would emphatically deny that this expansion was in any way responsible for the decrease in the number of births in American families. These opponents could give evidence of various kinds of malicious propaganda advocating smaller families. A group of sociologists saw imminent danger of over-population in the United States. One of their number, Professor East in his book, *Mankind at the Crossroads*, maintained that the agricultural resources of this country could support a population of only 166 million people.16 (The Department of Agriculture estimated a decade after the professor's warning that the United States is able to grow enough food for a population of 300 million without any additional improvements in food production.17) This excess population argument was but one of the many which Mr. Grant could have found in explanation for the declining birth rate.

But that gentleman was not so much concerned with Professor East's fear of surplus population as he was with the ideal population of the United States from a point of view of living standards. According to Mr. Grant 60 million inhabitants would assure plenty of backyard space and the most prosperous and vigorous people on earth.18 This may have been his reason for advocating the policy of "America for Americans," whereby the United States should consider immigration and its limitations.

17Ibid., 111.
18The Forum, 350.
solely from her own standpoint and feel no obligation nor duty to anyone else. Jane Addams from her humanitarian point of view characterized an attitude such as this when she made the following meaningful comment which might well have been addressed to restriction adherents:

While I should hate to designate our super nationalism the sin of idolatry, in the theological sense, because men's hearts which often harbor it are filled with devotion and a desire for self sacrifice, yet from the social point of view, it is a sin against our common humanity and its social consequences are amazingly disastrous.

This section of chapter four may well be concluded by a summary, explanatory to the necessity of the National Origins Act, provided by a writer of one of the articles in Foreign Affairs for September 1924. The first consideration, in the opinion of the writer, is that the "traditional" attitude of the United States had roots more in economic conditions than in the proverbial altruistic spirit because in the early days there was an abundance of land and a scarcity of labor. The number of immigrants was small, and they could be easily assimilated. However, the "new" immigrants possessed different racial characteristics; their standards of living were lower, and they were physically and mentally unfit. Their loyalty to their fatherlands caused them to settle in groups where they maintained their foreign character, customs and traditions. Moreover, the public land was practically exhausted and the immigrant laborers, skilled and unskilled, were considered in large

19 Ibid., 347.
measure responsible for the acute labor problems. Added to all of these reasons was the idea that the United States was losing its homogeneous character. This above all else warranted the National Origins plan; for it would, according to Commissioner Curran, assure a population in exact miniature of that which the United States was in original stock. For this reason he believed the plan constituted a bed rock immigration policy, and that it was one of the fairest and most constructive that had ever been embodied in any law.21

These opinions furnished by Fairchild, Garis, Grant and numerous other restrictionists are effective examples of the lack of reasoning found in the majority of arguments advanced by an influential group whose views were broadcast through the medium of the secular press. The editor of the New York Times gave a splendid diagnosis of the ailment of these restrictionists when he said:

... Race prejudice is easily aroused and can be quelled with difficulty, and when it is distorted by reviving the old conception of a 'chosen people', which the Germans made their own before the war and which is now being broadcast by defenders of the so-called "Nordic theory," it too readily causes some people to substitute sentiment for reason and to lose sight of the purely American point of view.22

However, these men comprised but one of the schools of secular thought on the National Origins issue; there was another equally strong group who adhered to fundamental ideas on the immigration question. These were they who believed that the "natural law is grounded in the

21 Foreign Affairs, 108.
innermost nature of man or of society, independent of convention, legislation or other institutional devices." Their ideas concerning restriction are in accord with those examined in chapter three.

This group of restriction opponents were unanimous in their opinions that there was a definite need for a regulated policy of immigration; unanimous too were they in their views that the percentage plan was not the solution to the problem. They objected strenuously to numerical limitation, for they felt that there was in it no standard for gauging the real worth of a man with regard to his mental, his moral and his physical fitness. They granted the fact that the plan had kept some of the undesirables out of the country; they objected to it on the grounds that it had kept many thousand of desirable immigrants from entering. Mr. Guy E. Tripp, Chairman of the Westinghouse Electric and Manufacturing Company, when asked for his opinion of the immigration problem had this to say of it:

Immigration itself is a stream. Any immigration law that fixes limitations or restrictions on free immigration is a dam. Most people are agreed that such a dam is necessary to keep out such groups as the criminal, the insane, the pauper, the anarchist and those likely to have a detrimental influence on our welfare. On the other hand, there is equal agreement that any legislative proposal that attempts to restrict the flow of migration by setting up a mathematical ratio without regard to selection or discrimination of the immigrant, the needs of our industries or any other aspects is undesirable as either a short time or a permanent solution.24

23 Encyclopaedia of the Social Sciences, 300.
Innumerable examples such as this might be quoted; most of the objections were based on the unfairness and discriminatory nature of the law. That the real criticism to immigration legislation began in 1917 with the passage of the literacy test, which had as its basic purpose to exclude the peoples from southeastern Europe, is evinced in many opposing opinions. That this 1917 legislation and that which followed in the twenties were considered un-American in principle seems to have been a universal view of the adversaries of this type of legislation. One compared such laws to those which the Lenins and Trotskys passed with ease. They were, he maintained, evidences of original handicaps and not tests of integrity or character. This writer would probably have been of the same opinion as the gentleman who facetiously remarked regarding tests and immigration laws: "Americans are lucky because they came to the United States before they made the immigration laws." His remark that had these tests been applied to our most useful and illustrious citizens, it is very probable they would not be a part of the country's population, confirms his agreement with the humorist's version of the laws.

When one reflects that the Carnegies came near failing to gain entrance to the land which made the little freckle-faced Andy, then a boy of thirteen, one of its most renowned men of the modern world; that Joseph Pulitzer, the great editor and pioneer in militant journalism, swam ashore at Boston because of some hindrance; that Charles Proteus Steinmetz, master of the electric motor and wizard of the alternating

currents, was excluded or detained upon landing here; that Michael Pupin, conqueror of electric intrigues called inductances and teacher of sciences, was held up at Castle Garden as likely to become a public charge—when all these close calls of our truly great men are considered, with the thousands of others not mentioned here, it must be acknowledged that Castle Garden and Ellis Island have failed prodigiously, absurdly in assising genius at the guarded gate.27

How, it might be asked, did the group who looked with disfavor upon the National Origins Act meet its advocates' agrument of non-assimilation which threatened, according to their views, the very foundations of democracy? Again a universal agreement was held by the opponents who maintained that the charge that immigrant nationalities did not intermingle was not borne out by facts. These cited numerous instances of intermarriages between "old" and "new" immigrants. The contention of the menace of racial blood was likewise disproved; this was founded on generalities based on "vague impressions obtained from the massing of groups in congested city quarters."28 The fact that the second generation of immigrants approached the American norm in practically every social characteristic and that many from southeastern as well as northwestern Europe were leaders in various walks of American life are two other falsifying factors in the argument of non-assimilation.

That the opponents of the National Origins Act were aware of the need of some definite immigration policy has been shown by a few representative views; that their opinion that the non-assimilation

27"Genius at the Guarded Gate." The Outlook. September 25, 1929, 126.
28"This Nordic Nonsense." The Forum. October, 1925, 511.
argument of the restrictionists was, like every other phase of the question, based on generalities which had no foundation in fact has likewise been considered. There yet remains an examination of their ideas on the subject of Nordic superiority. Much has already been said of the loud prating for the preservation of the original stock of the United States. Anyone in possession of the barest facts of American history knows from what sources the original stock came. The "native American" who shouted the loudest at the time of the National Origins debates might well have had ancestors who were brought to this country as indentured servants or from foul cells in debtors' prisons. No individual with the slightest trace of gentility would think of making a disparaging remark about these ancestors who comprised the "original stock;" but representatives of the American people, some of whom were probably sons or grandsons of men who were born on the eastern side of the Atlantic, broadcast far and wide their ideas of the inferiority of the ancestors of some of the naturalized citizens of this country. It was for this reason that the Nordic complex became such a bitter subject of controversy. One of the most ironic treatments of the subject as to where the Nordic derived his superiority is so grounded in truth beneath its irony as to be thought worth quoting in part here:

...It is evident that if he is superior, if he is so markedly better than other men that he may justly exclude them from his regard, his superiority must come, (1) from the special favor and reward of Divine Providence, had by exceeding great merit; or, (2) from some rare quality or chemic element in blood or brain different from the elements in others; or, (3) from something magical in his climatic or geographical position, something in the northern
cloud, mist, fog, or cold that lifts him above men not so blessed in their weather.29

* * *

... The whole notion that any part of the human family is in any part better than others, or hopelessly different from them is the fantastic invention of ignorant vanity. The notion that God has set apart one division of his children to ride upon the neck of others is the red-hued sign of historic horrors. When one people differs from another it differs because of mysterious chemistries of blood, brain, bone, tissue, pigment, liver, lights or aught else.30

Professor Albert Shiels of the Teachers' Columbia University maintained that this discrimination was the product of racial and religious prejudices which confused patriotism and prejudice. He reiterated the idea of his colleagues as to generalities in charges against the immigrant; the fact that radicalism and social unrest were found to be qualities of some immigrants, they were, therefore, attributed characteristics of all immigrants.31 Regarding Nordicists, Professor Shiels had this to say; "A more recent accession to the army of objectors is a group of ethnologists who gravely attribute to one race the monopoly of leadership in the evolution of progress. Present immigration does not belong to this superior race."

The proponents of the National Origins Act succeeded in doing what they considered constructive in the final passage of the legislation. The authorities who opposed it from the point of view of Catholic principles achieved their goal by providing substantial evidence that the

30 Ibid., 692.
32 Ibid.
bill was unethical and contrary to the principles of the Declaration of Independence and the Constitution of the United States. What constructive policy was offered by those whose views have been found in the secular press? The American Industries at the beginning of the controversy on restriction sent a letter to a large number of leaders in practically every field of American life asking what should be done about the immigration problem. Some of the answers received have already been considered in this section of the chapter, but their suggestions for a constructive policy will be considered here. The opinion voiced by a large group was that the chief difficulty in the immigration problem was that of distribution. If that solution could be found, all concern about non-assimilation and its resultant evils would be at an end.

Accordingly, a number of leaders proposed that a centralized bureau or commission should be set up which would handle all problems of immigration in the most practical and efficient way. The commission would be expected to know the needs of the various sections of the country and the opportunities these sections offered for immigrants who would be made aware of the different types of work which were open to them before they left their own countries. In conjunction with this opinion many leaders believed that in order to secure the proper distribution of immigrants, the government should have a right to say where these people should go.33

Very general was the view that immigration should be taken out of the grasp of politics. This idea was well stated by Frederick A. Wallis, a former Commissioner of Immigration at the Port of New York:

Above all things, I believe that the great immigration question, and also the great educational system of our country should be protected from the maneuvering of politics, because it is from the standpoint of humanity too sacred to be exploited by partisan and private interests.34

What did these replies from influential men in many walks of life avail? Judging from the restrictionists' subsequent success in passing the National Origins Act, it would seem that their opponents' views were inconsequential. But a bit of reflection on the nature of the contents of these replies will give evidence to the fact that there are thoughtful leaders in many circles of American life who are still imbued with fundamental principles with regard to the natural rights of their fellow men.

The opinions which have been considered have made the charges that the United States deviated from principle in advocating restriction along mathematical lines. Up to this time the country had been on record as guaranteeing protection in the right to life, liberty, and prosperity to every citizen whether native or naturalized.35 By this guarantee the United States had been a convincing illustration of the earth's oneness, but the restrictive nature of the immigration policy proclaimed to the world that this nation had changed its attitude toward humanity.

Jane Addams, whose social work brought her into intimate contact with immigrants and their problems, was enabled by this contact to view the immigration issue from another angle. Because her observations have


35 "We Invited Our Aliens." The American Mercury. March, 1940, 323.
been made over a period of years, her deductions represent a worthwhile contribution with which to conclude this chapter on secular thought.

Our national self-righteousness, often honestly disguised as patriotism, in one aspect is part of that adolescent self-assertion sometimes crudely expressed, both by individuals and nations, in sheer boasting which the United States has never quite outgrown. In another aspect it is that complacency which we associate with the elderly, who justified by their own successes, have completely lost the faculty of self-criticism.

The third result of our national attitude toward the immigrant is that through our contempt for certain of our fellow citizens we have become indifferent to the protection of human life, sapping the very foundations upon which even primitive governments were born.36

36 The Survey Graphic, 98, 99.
CONCLUSION

The problem of this thesis has been to examine the evidence produced by the proponents and opponents on the subject of immigration restriction according to the percentage plan of the National Origins Act and to show that the stipulations of this legislation are contrary to the fundamental rights of man. A further attempt has been made to prove that the means used for the statistical computation of quotas were unethical. That the element of racism is engendered in the provisions of the National Origins Act has likewise been considered in the thesis; that the same element has a role of importance in the present conflict will be briefly treated in the conclusion.

The National Origins Act is contrary to the fundamental rights of man because it denies some classes the right of exercising their God-given liberties by refusing to grant them admission into the country where they would be able to provide for the necessities of life when conditions in foreign countries render such provision impossible. The discriminating character of the law refuses recognition to the principle of man's equality since it stresses the superiority of some nationalities. These indictments prove that the immigration legislation of 1924 is in opposition to the basic tenets of the Declaration of Independence which states specifically that the fundamental rights of man are inalienable.

The Constitution has always been regarded as a guarantee of the protection of the rights of the citizens of the United States. Inasmuch as the National Origins Act violates the fourteenth amendment it is in conflict
with the essential principles on which the American democracy was founded.

Another aspect of the problem which gave rise to the charge that the National Origins Act was unethical was the manner by which the quotas for admissible aliens were determined. Lengthy consideration has already been given to the North Report which was used by Dr. Trevor in the population tables which were intended to provide a basis for the computation of quotas according to the national origins of the inhabitants of the United States. Ample evidence has been advanced to verify the charge that the North Report had no basis in fact since its figures were supposedly obtained from the census of 1790. Scholars have proved that this complete census was not in existence; furthermore, the North Report contained much more information about the original inhabitants than did the earliest census records which provided the scantiest information.

Other statistics which figured prominently in the scheme of national origins were those provided by the results of the Army tests given during World War I. These figures were used as proof of the inferiority of the peoples of southeastern Europe. An examination of contributing factors would prove that the conclusions drawn from the results of these tests provided an unfair basis upon which to judge the intelligence of the different nationalities resident in the United States. Professor Brigham in his study of American intelligence compared the scores made by men of sixteen nationalities which were represented in the foreign born draft. These had been in the country varying periods of time.¹ Some were given the Alpha tests, others the Beta, and still

¹Educational Review, 183.
others individual tests. Brigham combined the scores of all three types of tests on a scale and he divided the median scores into four groups according to the number of years residence in the United States; those from sixteen to twenty years, from eleven to fifteen years, from six to ten years, and from zero to five years. The result showed that those who had been in the country the longest period of time made the highest scores. Those who had been resident in the country sixteen years or over had attended American schools. Large numbers of others who took the tests were from non-English speaking countries. Moreover, many of the "new" immigrants had come from countries where educational opportunities were meager; consequently the scores of the most recent immigrants were low which accounts for Professor Brigham's scale which ranks the foreign born as follows: English, Norwegian, Belgian, Irish, Austrian, Turk, Greek, Russian, Italian, Polish.2 The fact that more than three-fourths of these were late arrivals and had been affected little by American education should prove a convincing argument of the little value of such a table showing the ranks of the different nationalities.

A further examination of the real nature of the results proved worthwhile, for it was found that the scores within the states were largely affected by the efficiency of the school systems. Contrary to restrictionist opinion was the evidence produced by a study of the results of the tests in Massachusetts and Connecticut both of which

2Ibid.
had a large Mediterranean immigrant population. These two states rated high in the Alpha and other intelligence tests because of the efficiency of their school systems.\(^3\) Opposed to the theory of the Nordicists was the fact that the states having the highest population of Nordic blood had the poorest schools and the lowest white intelligence as measured by Army Alpha tests, by adult literacy, by the distribution of public libraries, by the proportion of leaders produced and by various other standards.\(^4\)

All of the facts just considered are intended to verify the allegation that the statistics obtained from the Army tests, which were intended to prove the intellectual inferiority of the peoples discriminated against by the National Origins Act, were untrustworthy. They did not, as the proponents maintained, measure native intelligence nor did they reveal national levels of intelligence, but rather they clearly indicated a lack of educational opportunity.

When the rising tide of immigration made further legislation imperative, the percentage plan of 1921 was devised as a temporary emergency measure. The quotas for the various nationalities were determined by the figures in the 1910 census. However, the 1890 census was substituted when authorities were convinced that the idea of numerical limitation according to the plan of national origins was satisfactory and should be adopted permanently. Despite numerous protests to the contrary, no evidence has been found which can satisfactorily explain any

\(^3\)Ibid., 185.

\(^4\)Ibid.
reason other than discrimination against certain peoples for the abandonment of the 1910 census. Restrictionists have averred that there was vital need to preserve the homogeneity of the original stock, but they refused to admit that this would entail discrimination. Nevertheless, facts intended to prove the inferiority of the peoples of southeastern Europe were widely publicized, and the preservation of the Nordic race became something of a slogan during the time of the National Origins debates. Yet the charge that the Americans considered themselves a superior race would have met with vehement denial. As proof of the falsity of such an indictment it might be argued by restrictionists that World War II is being fought because of a madman's idea of the superiority of the German people. In this very contention lies an inconsistency on the part of the American people. They are taking active part in a bitter conflict to suppress the idea of a superior people, but any one who knows the nature of the immigration legislation of 1924 readily recognizes the similarity of the idea, though, fortunately, to an immeasurably lesser degree. A recent commentator speaking on racism saw in the tragedy of Pearl Harbor the shattering of the very foundations of the world. At the same time he recognized the hope of a reconstruction of a world with finer and nobler ideals, he said:

...Thus for the first time in its history, the great American nation was faced with the folly of the white man's philosophy of racial superiority. Only through a tragic sacrifice of some of the best blood of its citizens did the nation finally learn that the color of a man's skin and the shape of his nose do
not determine his capacity either for treachery, or
courage or calculating efficiency. 5

The problem of immigration has become insignificant during World
War II, but it will loom large on the post war horizon. Will the present
conflict have made any change in the attitude of the United States on the
subject of immigration? An examination of the views of some prominent
men would seem to indicate a new realization of American principles.
Mr. Eric A. Johnston, President of the Chamber of Commerce of the United
States, reiterated this idea in a speech before the Chamber's War Council
when he said: "The American ideal--life, liberty and the pursuit of
happiness is no idle phrase nor empty promise. It is a living reality ..
.....It means equality of opportunity, it means liberty and self-respect
of the individual." 6

Whether these idealistic views were intended to be applied to the
subject of immigration is questionable, but if an unbiased study were
made of the hardships to which unfair legislation has subjected minority
peoples, the necessity for respecting their natural rights would be
sufficient reason for an alteration of the immigration policy of the
United States. The true picture of the evils of immigration legislation
to date is effectively drawn by Monsignor MacLean of the Catholic
University of Washington in the following words:

By unreasonable immigration restriction, tariff
barriers, credit and exchange controls, we have
stripped hundreds of millions of less fortunate

5 Nick Aaron Ford. "What Negroes Are Fighting For." Vital Speeches of
the Day. February 1, 1943, 240.
June 15, 1943, 525.
peoples in the highly congested areas of Europe and Asia of their vital birthright of 'that surface which God has created and provided for the use of all.' Christian social justice demands that 'the nations less favored by nature' be 'permitted access to the economic resources and materials destined for the use of all' which heretofore have with cold and calculating egoism, been hoarded or even burned or destroyed;--while hundreds of millions of peoples have been forced thereby to endure misery, degradation and even the tortures of death from starvation.  

The passage just cited presents a fair exposition of the United States' defective handling of her immigration problem in the first decades of the twentieth century. Her materialistic outlook has forced her to abandon ideals engendered by the founding fathers of the nation. Whether or not the present conflict will have re-awakened in her a true sense of justice in the matter of caring for immigrants is a subject for speculation. Indications are that the nation will again be faced with the problem of wholesale immigration during the post war period. The manner in which the issue will then be met will be a fair norm for judging whether or not the nation's attitude has changed with regard to the fundamental rights of man.

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Exposure of the unethical means of quota computation.

, "Facts and a Fraud," Columbia, 4:5, October, 1925.
Bases the facts which prove that the National Origins Act is not so much a Nordic as a pro-British law.

Cites three objectionable phases of the legislation.
America's debt for the culture that is hers.

Authoritative views opposing restriction.

Belief that bill will better economic conditions in the United States.

Depicts the changed attitude of the United States to its immigrants.

An unbiased explanation of the provisions of the act.

Substantiates the President's veto with sound reasoning.

An ironic but truthful exposition of the Nordic theory.

Proves that the Immigration Act of 1924 was designed for the purpose of discrimination.

Alleges the unconstitutionality of the law on the basis that it violates the fourteenth amendment.

Suggests plan for the distribution of immigrants.

Opponents view of the purpose of the National Origins Act.

A discussion of the use of the 1790 census as a means of determining national origins.
Examination of the immigration issue from an angle other than that of cheap labor.

Stresses the idea of equality, condemns racism.

The idea of a restriction advocate to keep America American.

Unfavorably disposed to the immigrant who migrates from a purely economic motive.

NEWSPAPER ARTICLES

"Bill to Repeal Ban on Chinese," The Chicago Tribune, October 23, 1943.

"Preserving the American Race," The New York Times, April 5, 1924.

"Reed Sees Danger in Influx of Aliens," The New York Times, April 16, 1924.


The Thesis submitted by Sister Mary Grace (Patterson), O.S.B. has been read and approved by three members of the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Arts.

Nov. 27, 1944

Signature of Adviser