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RESIDENCE LAWS — A STEP FORWARD OR BACKWARD?

ANTHONY F. LOGATTO*

THE RECENT PASSAGE of Senator Mahoney's bill, which was signed by Governor Rockefeller on April 12, 1961, making residence within the state a condition for eligibility to receive public assistance broke precedent with long tradition. Actually there has never been in New York State a requirement that persons receiving assistance¹ be residents of the state for any particular period of time prior to receiving assistance.² As far back as 1873, New York State law provided that persons without settlement in the state were "State charges."³ Settlement was defined as living in a town or city for one year without receiving public assistance or care.⁴ This departure from tradition, however, was not accomplished without strong opposition and resolved itself ultimately into a compromise measure which took much of the vigor out of it.⁵

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¹ The statute will be known as the N. Y. SOC. WELFARE LAW §139-a.

² N. Y. State Ass'n of Councils and Chests, "Residence" as a Requirement for Public Assistance, Memorandum No. 1 (Dec. 1956).

³ *Ibid.* Since 1946, the N. Y. SOC. WELFARE LAW §2(21) (Supp. 1960) has provided that "state charge shall mean . . . any needy person without state residence."

⁴ N. Y. Sess. LAWS 1939, ch. 802, §56. In 1946, this section was repealed and a new definition of residence was adopted. See text accompanying note 9 *infra*.

⁵ See note 1 *supra*. The residence requirement adopted by this bill is not absolute; rather it centers around applicant's intent in entering the state. If the public welfare official determines that the applicant entered the state for the purpose of receiving public assistance or care, the application may be disapproved. The bill sets out those factors which must be considered in making such a determination, as follows:

"a. That the applicant is gainfully employed at the time of the application, or

But why the clash, and the sharp debate over a simple residence provision? Forty-seven states of the union have residence requirements of one length or another⁶ — why not New York? The answer obviously lies in the opposing ideologies. The one side, favoring the law, sees economic advantages

- b. That the applicant has been gainfully employed since his arrival in the state for a period of at least one month during his first year of residence in the state, or
- c. That the applicant had reasonable assurance of gainful employment before his arrival in the state, or
- d. That the applicant had reliable assurance of adequate private aid, maintenance or support or resources from relatives, friends or other sources in this state for himself and for any person dependent upon him for maintenance or support who preceded, followed or accompanied the applicant to this state, or
- e. That the applicant for the first six months after his entry into the state made no application for public assistance or care, or
- f. That in the case of an applicant who has entered the state within six months of the date of his application, such applicant entered the state for some purpose other than to receive public assistance or care.

The burden of proof is on the applicant who applies for assistance within six months after his arrival to show that his purpose in entering the state was not in order to receive public assistance or care. A failure to sustain this burden of proof gives rise to a presumption that the applicant entered the state for the purpose of receiving assistance and he will be deemed "undeserving of and ineligible for assistance."

This bill also makes provision for temporary emergency relief to an applicant in immediate need.

⁶ See, e.g., ALA. CODE tit. 49, §17(14) (1958); ALASKA COMP. LAWS ANN. §51-2-51 (1949); ARIZ. REV. STAT. ANN. §46-209 (1956); ARK. STAT. §83-124 (1947); CAL. WELFARE AND INST'NS CODE §§2001, 3041, 4160; COLO. REV. STAT. §119-6-6 (Supp. 1957); CONN. GEN. STAT. ANN. §§17-85, 17-109 (1960); DEL. CODE ANN. tit. 31, §504 (1953); GA. CODE ANN. §§99-603, 99-704 (1955); IDAHO CODE ANN. §§56-207-09 (1947); ILL. ANN. STAT. ch. 23, §406 (Smith-Hurd 1958).

to the state and, to some extent, social benefits. The other side, opposing the law, sees basic democratic, moral and humanitarian principles at stake with some concern for economic losses to the local community. Since the floor of the legislature does not lend itself to an academic leisure which permits a more speculative analysis of the issues, this paper shall attempt to make a valuative judgment on the merits of the question from which, hopefully, to move into the question of dollars and cents. To put it more simply, is there a right and a wrong per se in a residence requirement, or is it just dollars and cents?

New York Law

Prior to the recent amendment, New York State had no residence requirement. Section 62 of the New York Social Welfare Law provided that "subject to reimbursement in the cases hereinafter provided for, each public welfare district shall be responsible for the assistance and care of any person who resides *or is found in its territory* and who is in need of public assistance and care which he is unable to provide for himself."⁷ "Reimbursement" as used in this section refers to a distribution of costs between the local community and the state. The term "state charge" refers to the assuming of the cost of assistance and care by the state for any needy person without state residence. "Local charge" refers to the assuming of costs by the local community for any other needy person with state residence.⁸ A person with state residence is "any person who shall reside in the state continuously for one year. . . ."⁹ Hence, the cost of assistance and care

⁷ N. Y. SOC. WELFARE LAW §62(1) (Supp. 1960) (emphasis added).

⁸ N. Y. SOC. WELFARE LAW §§2(21) (22), 62(3) (Supp. 1960).

⁹ N. Y. SOC. WELFARE LAW §117 (Supp. 1960).

for an indigent person without state residence is attributable to the state on a one-hundred per cent basis; but as to a person who has established state residence, the cost is attributable to the local community, in this case New York City.¹⁰

Thus far, the factual picture. Of more basic concern, however, are the philosophical, legal and social issues involved. Some questions immediately suggest themselves: what is the position of the public assistance recipient? Does the state bear any responsibility toward the destitute within the confines of its borders? May a state refuse admission to an indigent person? May a state prohibit or hamper the free movement of persons between states? Underlying all of these questions, however, is the ultimate question: are human values and moral issues involved? If so, what inferences are to be drawn as to state policy and public policy? An examination of these questions follows.

Philosophical Issues

It is the province of philosophy to demonstrate and define the basic values which govern the relationships of man to man, of man to the state (and, of course, of man to God). Therefore in attempting to evaluate social policy, such as is being done here in reference to public assistance, recourse must

¹⁰ Welfare programs under the Social Security Act are shared as to costs by the city, the state and federal governments in accordance with reimbursement formulae, set forth in that law. The funds for aid to dependent children are contributed by federal payments of about fifty per cent and by state and municipal payments of about twenty-five percent each. Other programs are supported by the state and municipality exclusively, as in the case of home relief, or solely by the municipality, for example—day care of children. FEDERAL AND STATE AID TO MUNICIPAL WELFARE AND HEALTH PROGRAMS IN NEW YORK CITY 28 (1955).

first be had to principles (which are derived from values). These in turn determine the validity of legal enactment and of the dispersal of funds, private or public.

To return to the issues, what is the position of the public assistance recipient? Is it one of right or of charity? If it is of right, what kind of right is it, moral or legal? “[C]harity leads us to help our neighbour in his need out of our own stores, while justice teaches us to give to another what belongs to him.”¹¹ Justice is the rendering to each one what is already his; he has right, title or interest already vested; and so we may speak of justice only when there exists this independent title.¹² Charity, on the other hand, exerts its demand because of the common bond of human nature. Man is forbidden by natural law to exclude his fellow man and to close his eyes to his needs and frailties.¹³ The rights of the needy, therefore, are in charity and not in justice — both as against the individual and as against society. In pursuance of positive (enacted) law, however, the right of the needy is not only in charity but in justice too. The law creates the liability.¹⁴ This natural law doctrine is not only the doctrine of the Church but, interestingly enough, it seems to be shared rather exactly by the courts in their various pronouncements. In *Bila v. Young*, the court said “the moral obligation resting upon the state to care for its indigent aged was raised to the dignity of a legal obligation by the adoption of the legislation. . . .”¹⁵ (Welfare and Institutions Code providing that any aged person qualifying under the

¹¹ 8 CATHOLIC ENCYCLOPEDIA 571-72 (1913).

¹² 1. NOLDIN - SCHMITT, SUMMA THEOLOGIAE MORALIS 271 (1940).

¹³ 2. NOLDIN - SCHMITT, SUMMA THEOLOGIAE MORALIS 81 (1940).

¹⁴ See notes 12-13 *supra*.

¹⁵ 20 Cal. 2d 865,—, 120 P.2d 904, 908 (1942).

provisions thereof shall be entitled to old age relief). It was stated in *Creighton v. Pope County*¹⁶ that there is no legal obligation on the part of the state or any local governmental unit to support poor persons or blind persons unless such obligation is created by statute. Practically all other cases speak in a similar vein.¹⁷

Legal Issues

This is the philosophical basis. What is the basis, however, in statutory law? Since the common law developed in an atmosphere of close Church-State relationships, the works of charity, so characteristic of the Church, were assumed by the Church, thus relieving the secular government of this duty.¹⁸ "At early common law there was no legal obligation on any of the instrumentalities of state to furnish relief to paupers. Matters of charity were thought more appropriate for the church."¹⁹ This arrangement came to an end as of the time of the English Reformation and the consequent confiscation of lands and estates from the Catholic clergy, especially from the monastic orders.²⁰ Once this private and organized

system of charity was done away with, the vast number of destitute flocking into London and other English cities compelled the public conscience to do something about it. The English Poor Laws of 1601²¹ initiated a system of public, tax-supported relief and the establishing of the alms house and the work house. Penal and lacking in dignity as it was, this enactment (and a few less important ones that preceded it) was the forerunner of succeeding enactments and ultimately of the vast system of public assistance which is so commonplace today in common-law countries.²² Today public relief is either by statute, constituting a legal right, or it doesn't exist at all, at least as enforceable in law.²³

The authority of the state to provide for, and regulate the care of the needy and the distressed is found in the police power of the state.²⁴ This is generally defined as the right and duty of the state to watch over and promote the health, safety and welfare of its citizens.²⁵ "Relief by the state of the

¹⁶ 386 Ill. 468, 54 N.E.2d 543 (1944).

¹⁷ *Duren v. City of Binghamton*, 258 App. Div. 694, 18 N.Y.S.2d 518 (3d Dep't 1940); *State v. City of Bristol*, 139 Conn. 469, 95 A.2d 78 (1953); *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953); *Michel v. State Bd.*, 245 Iowa 961, 65 N.W.2d 89 (1954); *Bureau of Old-Age Assistance v. Commissioner*, 326 Mass. 121, 93 N.E.2d 267 (1950); *Weber v. Weber*, 77 N.D. 142, 42 N.W.2d 67 (1950); *State ex rel. Ranz v. City of Youngstown*, 140 Ohio St. 477, 45 N.E.2d 767 (1942); *North Dakota ex rel. Strutz v. Perkins County*, 69 S.D. 270, 9 N.W.2d 500 (1943).

¹⁸ MURRY - FLYNN, *SOCIAL PROBLEMS* 364-67 (1938); O'GRADY, *THE CATHOLIC CHURCH AND THE DESTITUTE* 21-24 (1929); STROUP, *SOCIAL WORK* 41 (1948).

¹⁹ *Thiede v. Scandia Valley*, 217 Minn. 218, 14 N.W.2d 400, 408 (1944).

²⁰ MURRY - FLYNN, *op. cit. supra* note 18, at 367-72.

²¹ English Poor Laws, 1601, 43 Eliz. c. 2.

²² See note 19 *supra*.

²³ See notes 15-17 *supra*.

²⁴ *Moore v. Walker County*, 236 Ala. 688, 185 So. 175 (1938); *People ex rel. Heydenreich v. Lyons*, 374 Ill. 557, 30 N.E.2d 46 (1940); *Proffitt v. Christian County*, 370 Ill. 530, 19 N.E.2d 345 (1939); *Bowman v. Frost*, 289 Ky. 826, 158 S.W.2d 945 (1942).

²⁵ See *Bacon v. Walker*, 204 U.S. 311 (1907). The police power extends to "dealing with the conditions which exist in the State so as to bring out of them the greatest welfare of the people." *Id.* at 318. See also *Northwestern Laundry v. City of Des Moines*, 239 U.S. 486 (1916) (limit smoke nuisance); *Laurel Hill Cemetery v. City of San Francisco*, 216 U.S. 358 (1910) (control burial of the dead); *California Reduction Co. v. Sanitary Reduction Works*, 199 U.S. 306 (1905) (regulate removal of garbage and other waste or noxious matter); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compel vaccination); *Dent v. West Virginia*, 129 U.S. 114 (1889) (regulate

needy and afflicted who are unable to care for themselves is an accepted exercise of valid authority under the police power in promotion of the general welfare. . . ."²⁶ At early common law, however, this authority assumed a more personal tone. The King, as ultimate owner of all the lands of his kingdom, exercised toward his people, as his vassals, a paternalistic attitude and control, also assuming thereby an ultimate responsibility toward them for their general welfare.²⁷ "It is the unquestioned right and imperative duty of every enlightened government, in its character of *parens patriae*, to protect and provide for the comfort and well-being of such of its citizens as, by reason of . . . misfortune or infirmity, are unable to care for themselves."²⁸ It is in this role of "*parens patriae*" that the courts in the name of the state exercise a particular vigilance over the orphan, the neglected and dependent or the delinquent child.

The remaining questions, in many ways very important ones, such as whether or not a state may refuse admission to indigent persons or prohibit and hamper the free movement of persons between states will be treated in the latter portion of this paper.

All Those In Favor

The foregoing considerations frame the issues. The arguments on the part of the proponents and the opponents of residency follow and in that order. It is interesting to note that the position of those favoring a residence limitation is more easily formulated

and simpler to assimilate, while that of the opponents to the law limiting residence is more extensive to formulate, more subtle to grasp and more philosophical and sociological in evaluation.

There is no doubt, broad as this assertion seems, that the primary motive of the proponents of residence laws is to cut welfare costs for the state and in some instances where the law so provides, as in New York State, to pass these costs on to the local community if it chooses to accept the indigent into its borders.²⁹

High on the list of the proscribed is the indigent migrant who drifts into the state, according to the proponents of the law, to enjoy the relief grants, obtainable practically without difficulty or delay. Senator John H. Cooke, lusty champion for residence laws in New York State, proclaimed that the recent amendment "will close our borders to the chiseling free-loader."³⁰

Also of a budgetary nature is the objection that an unlimited influx of unskilled labor is prejudicial to native labor since the higher paid New York worker is not able successfully to compete with "cheap" labor. Senator Walter J. Mahoney, Republican majority leader, arch-advocate of residence laws for New York State, has called the bill "an economic necessity" because of the increased competition for jobs.³¹

A more critical charge is the argument that the immigrant group fosters crime and delinquency and swells the jails and treatment centers of the state. So, too, they are charged with being the active agents in depressing real estate values, creating slums, and fostering vice. In fact, there is very little that is wrong in New York State that has not

the practice of medicine); *Powell v. Pennsylvania*, 127 U.S. 678 (1888) (regulate sale of adulterated foods and drugs or protect the milk supply).

²⁶ *Bowman v. Frost*, *supra* note 24, at 948.

²⁷ See MOYNIHAN, *REAL PROPERTY* 1-4 (1940).

²⁸ *Creighton v. Pope County*, 320 Ill. App. 256, —, 50 N.E.2d 984, 986 (1943).

²⁹ See N.Y. Times, Feb. 20, 1958, p. 18, col. 3.

³⁰ N.Y. Times, Mar. 9, 1960, p. 32, col. 2.

³¹ N.Y. Times, Feb. 27, 1961, p. 16, col. 3.

been attributed in some way or other to minorities migrating into the state.

All Those Against

The position of those against a residence limitation ranges from a very simple statement that such is not a limitation, to very solemn pronouncements of a philosophical and sociological nature.

The charge that the indigent flock into New York State, or into any state without residence requirements, attracted by the fat bait of easy-to-get relief benefits, is one which strikes with immediate impact. The instinct not to be made a fool brings instant response to the charge which now has amazing plausibility. The convert, with characteristic zeal, repeats the charge, now with conviction and indignation. This is prejudice — a judgment before the facts, really on allegations gratuitously assumed. Logically, this argument is quickly disposed of, since what is gratuitously asserted is gratuitously denied. This clears the head but not the feelings, which somehow still persist. The fact is that those best in a position to know, whose very profession is to deal with people in difficulty, with the indigent, the newcomer, the disadvantaged, bear strong testimony to the fact that people are decent, and want respect; they don't want "charity." Private social agencies, public welfare agencies, the National Association of Social Workers and the three major faiths³² are on record as opposing residence restrictions. This is a formidable array of people who know. Are others in a comparable position to pass judgment? The history of the world and experience with human nature point up the fact that people are born into this world with strong instinctual drives to survive and to

improve their lot. Society puts high value on this upward surge and social pressure whips the spark of self-initiative into a flame. The few who unfortunately lack or who have lost this upward mobility are sick members of society who need help and treatment rather than castigation. They have already suffered much.

The facts happily support the more benign attitude toward new peoples. It is most enlightening to observe, for instance, that residence laws have not acted as a deterrent to the flow of populations from state to state when opportunities for jobs and homes were present. California³³ which has about the most stringent residence laws in the country was second only to Florida in attracting new residents.³⁴ This in spite of the fact that Florida itself has a tough residence law.³⁵ A recent Chicago study sup-

³³ CAL. WELFARE AND INSTITUTIONS CODE §4160 (Supp. 1960). Aid shall be granted to the disabled "who resides in the State and has so resided continuously for at least one year immediately preceding the date of application and for at least five years within the nine years immediately preceding the date of application." The severity of California's welfare laws is most evident in its prohibition of aid to those who became blind while a non-resident of California unless they have been residents for a period of ten years. CAL. WELFARE AND INSTITUTIONS CODE §3041 (Supp. 1960). [Author's note: This eligibility requirement of residence for a period of ten years appears to be inconsistent with the express provisions of the Social Security Act which provide that a state may in its own discretion establish a residence requirement not to exceed five years in the case of aid to the disabled, old-age assistance, and aid to the blind, and one year in the case of aid to dependent children. Unfortunately many states have adopted the permissive maxima as the state standard. See NATIONAL TRAVELERS AID ASS'N, RESIDENCE LAWS: ROAD BLOCK TO HUMAN WELFARE, 6 (1956).]

³⁴ N.Y. Times, Mar. 16, 1961, p. 17, col. 3.

³⁵ Florida has adopted the maximum limitation established by the Social Security Act. To estab-

³² See N.Y. Times, Mar. 26, 1958, p. 20, col. 4.

ported the same inference.³⁶ The New York State Department of Social Welfare reported that in 1955 non-residents made up only 1.8% of the case load.³⁷ According to testimony presented last year, only 1.5% had not lived in the state for a period of one year.³⁸

As for duration of dependency, and this is an important consideration since an annual increase of even 1.5% per year could reach a staggering proportion in time, it was found in New York City that the average duration of assistance to non-residents was six months for state charges and ten months as to local charges or a total of sixteen months.³⁹ It must be borne in mind here that this average included such cases as aid to dependent children, aid to the blind, and old age assistance which generally are long term cases. In upper New York State, a study revealed an average length of care of fourteen months. To round out the picture, the same study shows about 18% of the 1.8% of needy non-residents require help over a long period of time.⁴⁰

lish eligibility for old-age assistance or aid to the blind, the applicant must show that he has been a resident of the state during at least five years of the nine years immediately preceding application and a resident of the state one year immediately preceding application. FLA. STAT. ANN. §§409.16-17 (1960). Aid to dependent children will be granted only if the child has resided within the state one year before making application or, if the child is less than one year of age, if the child's parents or guardian has lived within the state one year before the birth of the child. FLA. STAT. ANN. §409.18 (1960).

³⁶ N.Y. Times, Mar. 6, 1961, p. 17, col. 3.

³⁷ N.Y. State Ass'n of Councils and Chests, "Residence" as a Requirement for Public Assistance, Memorandum No. 1 (Dec. 1956).

³⁸ N.Y. Times, Feb. 16, 1961, p. 21, col. 5.

³⁹ See note 37, *supra*.

⁴⁰ *Ibid*.

The Right To Free Movement

Thus far, we have considered the rights of the needy to assistance and care and the corresponding duty of public authority to provide accordingly. The subject of residence laws, however, would be essentially incomplete were no thought to be given to the wider and more ultimate question of the right of every human being to free movement in fulfillment of his destiny and in compliance with the natural law mandate that he seek the perfection of himself as a person.

In fulfillment of this legitimate aspiration man may not arbitrarily be cut off from the resources of the earth, since these are his only resources as a natural being. As was so well enunciated by Pope Pius XII "the Creator of the universe made all good things primarily for the use of all."⁴¹ Again, in the same document, His Holiness emphasized that the right to free movement "is based upon the very nature of the earth upon which men live."⁴² In Sacred Scripture the phrase of classic beauty is "The earth is the Lord's and the bounty thereof."⁴³ More concretely, the Holy Father declares freedom of movement as the fundamental right of families and of peoples to live in reasonable dignity and decency. Again he refers to it as the freedom of man to move from place to place and of the family to seek light and air for proper expansion.⁴⁴

It must be added at once, however, that the right of the individual, of a family, or of a people, to free movement has reasonable

⁴¹ *The Right to Migrate*, THE CATHOLIC MIND 478 (Sept.-Oct. 1960).

⁴² *Ibid*.

⁴³ ZIMMERMAN, PIUS XII AND INTERNATIONAL MIGRATION 1 (1959).

⁴⁴ *Id.* at 2.

limitations arising from the rights of others. Thus no individual, group or even a nation must accommodate others to the point of self-detriment since the right of the one in possession is at least as great as that of the other in need. The one is not to be saved by the destruction of the other. "States have a right to limit the influx of immigrants when this is done for real and genuine reasons of the common good, but they cannot exaggerate this right to the detriment of other peoples without transgressing the moral law. . . . Arbitrary laws are unethical. . . ."45

The doctrine of free movement both of the Church and of natural law, has its reflection in the statutory law of the United States and in Supreme Court decisions reflecting constitutional provisions. Curiously enough, the Constitution of the United States makes no express reference to the right of free movement among the various states. But, of course, there is interpretation of pertinent constitutional clauses in the various opinions of the Court. In the early cases it is interesting to observe the reflection of the punitive attitudes of the Elizabethan laws carried over to the new world as part of the English heritage and the change to the more benevolent and humanitarian attitudes of later years. In the very outspoken case of *Mayor of the City of New York v. Miln*,⁴⁶ a very early case, the Supreme Court said: "We think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts; as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an in-

fectious disease."⁴⁷ Fortunately this case was overruled in later decisions. One famous case, making specific reference to the outmoded holding of the *Miln* decision, said "the theory of the Elizabethan poor laws no longer fits the facts. . . ."48 "[W]e do not think it will now be seriously contended that because a person is without employment and without funds he constitutes a 'moral pestilence.' Poverty and immorality are not synonymous."⁴⁹ A line of cases,⁵⁰ culminating in *Edwards v. California*,⁵¹ just quoted, expressly grant the individual within the borders free movement from state to state. The *Passenger Cases* as early as 1848 contained this lofty language: "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."⁵² *Crandall v. Nevada* speaks of the same right holding that it "is in its nature independent of the will of any state over whose soil he must pass in the exercise of it."⁵³ The death knell to the last vestige of the Elizabethan spirit was sounded in *Edwards v. California*, passing directly on the issue: "We are of the opinion," stated Mr. Justice Byrnes, "that § 2615 is not a valid exercise of the police

⁴⁷ *Id.* at 142-43.

⁴⁸ *Edwards v. California*, 314 U.S. 160, 174 (1941).

⁴⁹ *Id.* at 177.

⁵⁰ *Twining v. New Jersey*, 211 U.S. 78 (1908); *Henderson v. Mayor of the City of New York*, 92 U.S. 259 (1875); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867); *Passenger Cases*, 48 U.S. (7 How.) 282 (1849); *Mayor of the City of New York v. Miln*, 21 U.S. (11 Pet.) 102 (1837).

⁵¹ See note 48 *supra*.

⁵² *Passenger Cases*, *supra* note 50, at 492.

⁵³ *Crandall v. Nevada*, *supra* note 50, at 44.

⁴⁵ *Id.* at 3-4.

⁴⁶ 21 U.S. (11 Pet.) 102 (1837).

power of California; that it imposes an unconstitutional burden upon interstate commerce. . . .”⁵⁴ Mr. Justice Douglas, concurring, preferred not to base the decision on the commerce clause. Rather, he was of the opinion that the right of persons to move freely from state to state was an incident of *national citizenship*.⁵⁵ The tenor of this line of cases was always one of national concern and geared toward a philosophy of providing a haven for the distressed and the homeless.

In many of the cases . . . in which the Supreme Court ruled against state restrictions on interstate and foreign commerce, the state was encumbering or prohibiting mass population movements, either the countless thousands streaming from Europe and Asia in the last century or the westward migration of Texies, Arkies and Okies from drought, dust and depression in the 1930's.⁵⁶

With the promulgation of the fourteenth amendment in 1868, an effort was made to protect the right of free movement under its privileges and immunities clause, but after a few feeble attempts the effort was abandoned.⁵⁷

Under the comity clause of the Constitution — “The Citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the Several States” — a new effort was made to protect the right of free movement. This approach, however, never found grace with the courts.⁵⁸

One very competent student of the problem of free movement and its constitutional protection feels very strongly that an indispensable element of the right of free

movement is the right to be on an equal footing with established residents of the community.⁵⁹ “If you may be denied substantial rights after arrival, if you may be barred from the common callings and resources of the community available to others, if opportunities of life and livelihood may be withheld from you on a discriminatory basis, then the right to go there is emptied of all substance and meaning.”⁶⁰ It is the opinion of the same writer that “length-of-residence requirements, existing universally throughout the country and in profusion, operate as an impairment of the right of free movement. They should accordingly be held unconstitutional. They are not generally necessary as local police regulations.”⁶¹

Free Movement An Economic Necessity

Underneath the heavy layer of philosophical and legal arguments supporting the right to free movement there is a very practical aspect which must not be forgotten — and that is that mobility is the essence of the economy of the United States as a nation. “The foundations of our nation were laid by people who have traveled far. Americans have been ‘on the move’ ever since.”⁶² Even with the passing of the frontier days the decennial census from 1890 on demonstrates that native Americans move from their state of birth in progressively increasing percentages. The only exception was during the depression years of the thirties.⁶³ The inference that depression and bad times depress mobility is tempting.

⁵⁴ *Edwards v. California*, *supra* note 48, at 177.

⁵⁵ *Id.* at 177-81.

⁵⁶ TENBROEK, *THE CONSTITUTION AND THE RIGHT OF FREE MOVEMENT* 9 (1955).

⁵⁷ *Id.* at 11.

⁵⁸ *Id.* at 12.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Id.* at 15.

⁶² NATIONAL TRAVELERS AID ASS'N, *RESIDENCE LAWS: ROAD BLOCK TO HUMAN WELFARE* 8 (1956).

⁶³ *Ibid.*

The succeeding war years and the years following the war brought a boom in population movement from state to state. Since 1950 about five million Americans have moved from one state to another every year. From 1950 to 1954 the populations of Arizona, California, Florida and Nevada increased from eighteen to thirty-one percent.⁶⁴ This constant interflow is the medium whereby knowledge, goods and skills are changed and interchanged. It is this mobility of manpower and brains which feeds the labor market and makes America the greatest industrial nation of the world and enables it to enjoy the highest standard of living on this globe. As Robert C. Goodwin, of the United States Department of Labor, states, "Free people are not moved — they move. They move because they are free to seek opportunity where *they* see it."⁶⁵ The pertinence of Mr. Goodwin's observation is that a free people stand in need of and will respond to intelligent guidance, in order to lessen the social problems which result from the mass movement of population. And this is very probably the solution to a substantial portion of the problems surrounding congested cities. Certainly were the government and voluntary groups to concentrate their energies and resources on intelligent and well-disseminated information, supply would more closely approximate demand. The Bureau of Employment Security and the various state employment services aim at placing the right man in the right job and at the right time.⁶⁶ This is of particular importance to migrant labor, which suffers high casualties in terms of seasonal work, lack of insurance protection, and of dis-

crimination in such vital services as health and welfare.

The lack of intelligent planning, insufficient services, and unwise concentration in certain cities and areas of the country has given rise to critical attitudes toward that element of the moving population which falls by the wayside. Thus the recruitment of workers from Puerto Rico in the late years of the war and in the early post-war years to meet the high demands of a bustling economy in some northern states led in part to the higher relief roles for Puerto Ricans. It must be kept in mind that the wages of Puerto Ricans and Negroes is generally one-third less than that of the white working force. These people are ill-equipped because of low earning power and because of discriminatory labor practices to protect themselves against such hazards as unemployment, sickness, and accident; hazards against which the white worker is much more adequately protected. In spite of these shortcomings Puerto Rican and Negro labor still fill the needs of the garment and hotel industry and make up much of the domestic help of such cities as New York which have high concentrations of these groups.

Faith in human nature, the bond of charity and plain common sense urge that efforts be continued in the direction of intelligent and benevolent assistance to new groups. Certainly much has been done to alleviate and ameliorate the plight of the "uprooted." But much remains to be done. The slum housing, depressed neighborhoods, unsanitary and indecent living conditions, high delinquency and crime areas, are not the result of the new arrivals. Rather they are conditions that preceded and continue with them. Puerto Ricans, for example, now form a definite part of teen-age gangs in New York City and yet this is not

⁶⁴ *Ibid.*

⁶⁵ *Id.* at 9.

⁶⁶ *Ibid.*

a tradition of the streets of San Juan but of the streets of New York.⁶⁷ Judge Leibowitz, of Kings County Court in New York City, testified that migrants come to New York "looking for a better life" but they are forced into "rat-infested places where they can't have a chance in the world."⁶⁸ Even if migration would cease, it would not solve the city's problems. All of them existed in New York long before their arrival — slum housing, juvenile delinquency, narcotics, low wages, racial tensions.⁶⁹

Conclusion

The presence of a new population is at once a threat and a challenge. If met with distrust, prejudice and pessimism, it could develop into retaliatory tactics — repression

⁶⁷ N.Y. Times, Oct. 21, 1959, p. 39, col. 4.

⁶⁸ N.Y. Times, Sept. 25, 1959, p. 19, col. 1.

⁶⁹ See note 67 *supra*; *Plight of the "Uprooted,"* AMERICA 121 (Oct. 31, 1959).

on the one side; violence, hatred and degradation on the other. But as a challenge it can stimulate a constructive philosophy which lifts a people up to a standard rather than depresses them. Residence laws, in view of the new learning, of new attitudes of rehabilitation, tend, as they were meant to be in their inception, to be suppressive rather than supportive. Residence laws are an escape from an irritating problem and constitute a throwback to approaches now considered unhealthy, unrealistic, and unfortunately ineffective since they leave the underlying problem largely untouched.

In a modern technological age where the ingenuity of man can send a man into outer space and retrieve him, certainly it can put man on intelligent, elevating work, which respects his dignity, enhances his surroundings and lets him live, as he was meant to live, as master of the universe, not as its slave.

SOCIETY'S CHALLENGE

(Continued)

an awareness of it, this is much more of a problem for them. The Catholic Church has built up a huge educational system in this country, and over the years we have learned to accept the financial burden which it entails. While we would like to be relieved of the double burden on our pocket-books and our sense of social justice, and while the burden becomes increasingly heavier with the expanding concept of what constitutes a school, we can continue to bear it. But with minor exceptions, our non-Catholic neighbors are dependent upon public schools. Their children are being victimized by the exclusion from the public schools of any mention of God or of the

purpose of creation. How are their children to develop the ethical principles and the moral consciousness which our society so desperately needs? The question is not easy of solution, but I am confident that one can be found if the majority of the people in this country are made to realize that one must be found. Here, then, is a chance to supply the intellectual leadership in the public interest which is the historical prerogative and the inherent duty of the legal profession. We who see the importance that belief in God and knowledge of His divine plan bear to our democratic institutions have an obligation to teach it, for, as St. Thomas More believed, "we cannot desire what we do not know nor can man achieve what he does not understand."