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cases which are relatively few in number but where the desirable result would be to prevent tax delinquency on a national scale. The purpose of New York's statute providing a reciprocal remedy to states which allow the same to New York is obviously to make such remedies mutual. The purpose could be better accomplished by enforcing all tax laws of sister states. Such a move by the Court of Appeals would not go unnoticed by the other states and would have a great effect in providing for such a national remedy which would be completely mutual. The decision of the majority only prolongs what at best is a very questionable policy when compared with the necessity that governments receive the funds to enable them to dispense their services efficiently, especially in view of today's cosmopolitanism and the working realities of our federal system. Moreover, the present policy extends a protection to the tax evader, who is not particularly deserving of such protection. The majority has rejected an opportunity in this case to take a step in the right direction which could have been arrived at either by a detailed examination of the full faith and credit clause as applied to final administrative determinations, or by a new policy of enforcing all taxes of sister states. As the Supreme Court said in the *Milwaukee County* case:

> The very purpose of the full faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin. That purpose ought not lightly to be set aside out of deference to a local policy which, if it exists, would seem to be too trivial to merit serious consideration when weighed against the policy of the constitutional provision and the interest of the state whose judgment is challenged.[15]

R. W. S.

CONSTITUTIONAL LAW

Black Muslim Attempt To Gain Recognition Within the Prisons

Petitioner, an inmate of Green Haven Prison and a member of the "Black Muslim" cult, instituted an article 78 proceeding to compel the Commissioner of Correction to permit him free exercise of his religion. Claiming that he was not allowed services and ministration from a clergyman of his choice, petitioner stated that the members of the cult were compelled to hold religious services in the prison yard. The Commissioner denied these allegations and stated that the petitioner desired ministration from an Islam temple headed by Malcolm X, an ex-convict. He maintained that it is the policy of correctional institutions in New York not to allow inmates to communicate

15. Milwaukee County v. M. E. White Co., supra note 4, at 276-77.

with those who have criminal backgrounds because it is not consistent with the security regulations of such institutions. Maintaining that at no time had these prisoners been forced to hold religious services in the prison yard, the Commissioner denied that these services were officially authorized. Because of the potential dangers to prison discipline involved in allowing the cult to entrench itself within the institution, the Commissioner claimed that restrictions upon the sect were justified. To point out these dangers, the Attorney-General attached to his brief newspaper and magazine articles which described the activities and goals of the "Black Muslims." On appeal from dismissal of the petition without benefit of a hearing, *held*, reversed and remanded to Special Term, one judge concurring, three judges dissenting. Mere speculation, based on matters outside the record, regarding the possible dangers of allowing the "Black Muslim" cult to disseminate its principles among the inmates of a prison, does not justify any curtailment of a prisoner's religious freedom as defined by Section 610 of the Correction Law. *Brown v. McGinnis*, 10 N.Y.2d 531, 180 N.E.2d 791, 225 N.Y.S.2d 497 (1962).[1]

The "Black Muslim" cult is a nationwide sect approximately 100,000 strong with temples in over sixty-nine cities.[2] The sect, established in 1930 and led since 1934 by Elijah Muhammad,[3] refers to its members as Blackmen, not Negroes, because of the connotations of racial inferiority which emanate from this latter term. Undoubtedly the cult is a reaction to racial intolerance in America; it espouses a radical solution to the problem of race relations. Demanding separation from the white civilization in the United States,[4] the sect emphasizes black superiority and group consciousness.[5] The separation program is divided into three elements: social, economic, and political.[6] Being against any integration movement, the cult is an outspoken critic of the NAACP.[7] Although personal separation from the white community is practiced today, the economic and political goals have not yet been achieved. Leaders have discussed commercial markets administered by Blacks and geographic areas to be set aside for residency by the Black people, but these plans have not been expressed in detail.[8] The cult has organized a secret army known as the Fruit of Islam; and although the exact strength and primary function of this group are unknown, allegedly this group enforces internal discipline.[9] Because of the possibility of the cult's purposes being subversive, the F.B.I. and various city officials closely watch Black Muslim activities.[10] Muslim religious leaders deny that the sect advocates violence and claim that

1. 13 A.D.2d 668, 215 N.Y.S.2d 1017 (2d Dep't 1961).
2. Lincoln, The Black Muslims in America, p. 4 (1961).
3. Lincoln, op. cit. at 10, 15.
4. Lincoln, op. cit. at 87.
5. Lincoln, op. cit. at 89.
6. Lincoln, op. cit. at 88.
7. Lincoln, op. cit. at 146.
8. Lincoln, op. cit. at 95.
9. Lincoln, op. cit. at 200.
10. Lincoln, op. cit. at 5.

physical force would only be used in self-defense. Further, they explain that whites are not excluded from their sect but that Elijah Muhammad is a prophet to the Black people; therefore, whites are not solicited for membership. Family morality and daily prayer are emphasized, and an abstinence from drinking, and smoking are required.[11] Although not accepted by the orthodox Moslems in America, because of his racial views and militancy, Elijah Muhammad was cordially received by Moslem leaders when he visited Mecca in 1959.[12] Malcolm X, the leader of the New York temple, asserted that this reception settled the question of the orthodoxy of the group.

Religious freedom is protected by the Constitution of the United States and of the State of New York.[13] However, the State Constitution provides that, "the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state." Section 610 of the Correction Law grants religious freedom to prison inmates but declares that such freedom must be limited so as to be consistent with the correctional program. Beyond this limitation, the section specifically states, "the inmates of such institutions shall be allowed such religious services and spiritual advice and spiritual ministration from some recognized clergyman of the denomination or church which said inmates may respectively prefer. . . ."

The majority based its decision on the fact that petitioner had not sought communication with any specific clergyman but rather had asked for spiritual ministration from the local temple. Because the Commissioner had not designated any recognized clergyman of the petitioner's denomination, the court believed that the problem about Malcolm X's criminal background never entered the picture. The potential dangers of allowing the Muslims to spread their ideology among the prisoners, as pointed out in newspaper and magazine articles attached to the Attorney-General's brief, was deemed to be "mere speculation, based upon matters dehors the record . . . ," and, therefore, "insufficient to sustain respondent's action."[14]

As the dissent indicates, the petitioner sought spiritual advice from a specific temple. The leader of this congregation has a criminal background; therefore, it appears that, aside from a question of semantics, the petitioner sought spiritual advice from a person with a criminal background. Presumably this is contrary to the intent of section 610 of the Correction Law. The significance of the fact that the Commission has not designated a recognized clergyman of the petitioner's denomination cannot be great because it is not an express requirement of section 610. The basic reasoning of the majority appears faulty in another area. If the Commissioner must wait until the potential

11. Lincoln, op. cit. at 164.
12. Lincoln, op. cit. at 222.
13. U.S. Const. amend. I; N.Y. Const. art. 1, § 3.
14. Brown v. McGinnis, 10 N.Y.2d 531, 536, 180 N.E.2d 791, 793, 225 N.Y.S.2d 497, 500.

dangers are realized before he can curtail petitioner's rights, the security of the correctional institution will be jeopardized. The right to freedom of religion, which is a qualified right at best, is expressly limited by section 610 just to avoid such a possibility. The dissent stated that "the warden is not required to supply clergymen of every conceivable denomination or sect under all circumstances." Obviously, if the selection is found to be contrary to the intent of section 610, the warden need not allow that clergyman to communicate with the inmates. However, this statement by the dissent implies that a prisoner may be denied ministration solely because he is the member of a small denomination. This principle cannot be gleaned from section 610. The Court, by attempting to determine whether the Commissioner had complied with the requirements of section 610, has implicitly held that the Black Muslims are a religious group. However, the interesting question of whether the Commissioner has denied the prisoner his religious freedom will be answered at Special Term.[15]

Bd.

EMERGENCY RENT CONTROL LAW AMENDMENT OF 1962 UPHELD AS NO DENIAL OF DUE PROCESS OR EQUAL PROTECTION

After the institution of "most recent years" equalization rates in 1961, the State Legislature made a complete reversal and reinstated the use of the 1954 equalization rate for computation of six per cent returns on rent-controlled residential property. Appellants, two landlords and a tenant, brought a direct appeal questioning the constitutionality of the statute,[1] specifically section four of the Emergency Housing Rent Control Law as amended in 1962.[2] The Court *held*: affirmed, two justices dissenting, that the statute was not an unconstitutional denial of due process, as producing a confiscatory result or as an unreasonable exercise of the police power, nor did it deny landlords or tenants equal protection of the law. *Bucho Holding Co. v. Temporary State Housing Rent Comm'n*, 11 N.Y.2d 469, 184 N.E.2d 569, 230 N.Y.S.2d 977 (1962).

When the Legislature has found an emergency to exist as a condition precedent, it has the right to institute rent controls in the exercise of its police power. Once enacted, no "vested interest" exists in the statute entitling a person to have the rates remain unaltered.[3] Rent control statutes enacted to meet emergencies and not contemplating the taking of property are not an arbitrary

15. Discussion of the Black Muslim problem as it is being treated in the federal court system can be found in: Pierce v. La Valle, 293 F.2d 233 (2d Cir. 1961); Sevell v. Pegelow, 291 F.2d 196 (4th Cir. 1961); 60 Mich. L. Rev. 643 (1962); and 75 Harv. L. Rev. 837 (1962).

1. N.Y. Civ. Prac. Act § 588(4); N.Y. C.P.L.R. § 5601(b)(2), eff. Sept. 1963.
2. N.Y. Unconsol. Laws § 8584(4)(a) (McKinney 1962); This provision is not applicable to New York City since that city has enacted its own rent control law pursuant to authority granted by the Legislature.
3. In the Matter of the Estate of West, 289 N.Y. 423, 46 N.E.2d 501 (1943).