

Constitutional Problems Under the Alien Land Laws

Fintan M. Flanagan

George Lorinczi

Frank Schlax

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>

 Part of the [Law Commons](#)

Repository Citation

Fintan M. Flanagan, George Lorinczi, and Frank Schlax, *Constitutional Problems Under the Alien Land Laws*, 36 Marq. L. Rev. 267 (1953).

Available at: <http://scholarship.law.marquette.edu/mulr/vol36/iss3/5>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

COMMENTS

CONSTITUTIONAL PROBLEMS UNDER THE ALIEN LAND LAWS

Recent developments, both in the United States and abroad, have resulted in an increased awareness of human rights and the necessity for their legal protection. The manifestations of this trend have appeared on the national as well as the international level, taking the form of treaties and covenants or legislative and judicial action. The purpose of this article is to highlight a facet of this development by examining the constitutional problems which have recently arisen in connection with the Alien Land Laws of some of the United States.

I. THE ALIEN LAND LAWS AND THE FOURTEENTH AMENDMENT

The issue of the constitutionality of the Alien Land Laws has not been met squarely by the highest court in the land since 1923. In that year the right of a state to deny residents, ineligible to citizenship by reason of federal law, the privilege of owning land was upheld.¹ Nevertheless, the late decisions of both federal and state courts indicate that when the problem is squarely considered by the Supreme Court the 1923 decisions will be reversed.²

Due Process

It is well established that aliens are entitled to the same protection of the Fourteenth Amendment as citizens.

“Nor shall any state deprive any person of life, liberty, or property, without due process of law.”

It is not confined to the protection of citizens. The Amendment is universal in its application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality.³ The due process clause of the Fourteenth Amendment is operative to protect the individual, whether he be alien or citizen, against state interference with private rights.

The leading case relied upon by those who would speak for the continued validity of the Alien Land Laws is *Terrace v. Thompson*. In that case Justice Butler concluded that legislation denying aliens the right to own real property did not violate the due process guaranty. He based that conclusion on two grounds: (1) The Fourteenth Amendment did not take away from the states those police powers that were reserved at the time of the adoption of the Constitution; and (2) one

¹ *Porterfield v. Webb*, 263 U.S. 225; *Webb v. O'Brien*, 263 U.S. 313; *Frick v. Webb*, 263 U.S. 326; *Terrace v. Thompson*, 263 U.S. 197.

² *Takahashi v. Fish and Game Comm.*, 334 P.S. 410 (1948); *Oyama v. California*, 332 U.S. 633 (1948); *Kenji Namba v. McCourt*, 185 Ore. 579, 204 P. 2d 569 (1949); *Sei Fujii v. California*, 39 Cal. 2d 218, 242 P. 2d 617 (1952); *Haruye Masaoka v. People*, 245 P. 2d 1062 (Cal. 1952).

³ *Yick Wo v. Hopkins*, 118 U.S. 356 (1885).

of those powers, in the absence of any treaty provision to the contrary, was to deny aliens the right to own land.

Refusal to accept the decision of the *Terrace case* and to apply it in present day considerations of the subject of alien land ownership lies in a reinterpretation of the concept of state police power.

Police power may be defined as the power inherent in a government to enact laws, within constitutional limits to promote the order, safety, health, morals, and general welfare of society.⁴

A state must exercise its police power subject to constitutional limitations and a state statute enacted in pursuance of the police power is void if in contravention of any express provision of the Federal Constitution.⁵ It is thus clearly indicated that the due process clause of the Fourteenth Amendment constitutes a limitation on the police powers of the states. The purpose of the guarantee is to prevent governmental encroachment upon the life, liberty and property of individuals, to secure the individual from the arbitrary exercise of the powers of government and to protect property from seizure by legislative enactments, and conviction without the ordinary modes of judicial procedure.⁶

In determining the validity of a statute which calls upon state police power for its enforcement, the courts are determined to protect constitutional rights; and a police regulation found to be without real and substantial relation to the objects properly within the police power, i.e., public health, safety, morals or general welfare, is a palpable invasion of due process of law and will be adjudged invalid.⁷

Admittedly, the manner in which the police power may be exercised is within the discretion of the state. This right is subject only to the condition that no laws prescribed by a state shall contravene the Constitution of the United States which forbids state legislation by which the property of any person is wrested from him without adequate compensation.

Therefore, in examining the Alien Land Laws, we must ask what is the relation between alien land ownership and health, morals, safety or welfare, which are the proper subjects of state police action? What legitimate justifications are there for restrictions upon alien land ownership? Is there anything inherently injurious to morals or dangerous to the public health, safety or welfare in the mere fact of such land ownership or control?

“Congress has neither declared nor assumed that landowners ineligible to citizenship are a danger to the state.”⁸

⁴ 16 C. J. S. CONSTITUTIONAL LAW §174 and cases there cited.

⁵ 16 C. J. S. CONSTITUTIONAL LAW §196 and cases there cited.

⁶ *Duncan v. Missouri*, 152 U.S. 377 (1893).

⁷ *Liggett Co. v. Baldrige*, 278 U.S. 105, 111-112 (1928).

⁸ *Sei Fujii v. California*, 38 Cal. 2d 718, 242 P. 2d 617, 626 (1952).

If the legislation upon the subject of alien land ownership is to be sustained, there must be found within ineligible aliens some valid reason why they should not be permitted to own and rent real property. In fact, in order to sustain the validity of the law, it is necessary to find within ineligible aliens an unfavorable quality of such magnitude that it demands that they be kept from owning land especially in light of the 14th Amendment which protects the individual against state interference with private rights that cannot be more than offset by public benefit.⁹ It cannot logically be assumed that ineligible aliens are incompetent farmers and that they should be barred from the soil as a means of conserving it. It cannot be soundly argued that they are wasteful of our natural resources.¹⁰

Justice Murphy in *Oyama v. California*, held:

"As this court has said, 'Loyalty is a matter of the heart and mind, not of race, creed or color. *Ex Parte Endo*, 323 U.S. 283, 302.' And so, racial eligibility for citizenship is an irrational basis for determining who is loyal or who desires to work for the welfare of the state."¹¹

But on the other hand the interference with private rights that flow from such a law is not difficult to perceive. In *Terrace v. Thompson*, a Japanese, who was admittedly an expert farmer was prohibited from advancing beyond the status of an ordinary laborer in one of the country's major occupations. He could not utilize his skill or his savings to better himself economically in what was the one field of endeavor he had mastered.

Equal Protection

The Supreme Court has long established that unreasonable discrimination against any person regardless of race, color or nationality is unconstitutional as violating the equal protection clause of the Fourteenth Amendment. The Amendment guarantees to any person within the jurisdiction of a state the equal protection of the laws.¹² Thus, every state law that discriminates against a particular class of residents must run the gauntlet of the Fourteenth Amendment's limitation: "No state shall deny to any person within its jurisdiction the equal protection of the laws."¹³

What is the "equal protection" that states are forbidden to deny residents, aliens and all others? The Supreme Court's interpretation, which has been settled for at least fifty years,¹⁴ is that no state shall

⁹ *Oyama v. California*, 332 U.S. 633 (1948).

¹⁰ *Sei Fujii v. California*, 38 Cal. 2nd 718, 242 P. 2d 617 (1952).

¹¹ *Oyama v. California*, 332 U.S. 633, 666 (1948).

¹² *Truax v. Raich*, 239 U.S. 33 (1915).

¹³ *Truax v. Raich*, 239 U.S. 33 (1915).

¹⁴ *Gulf Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U.S. 150 (1897).

make any discrimination against alien residents that is not rational with respect to the purpose of the particular statute by which it is made. Not all state discrimination against alien residents that is not rational with respect to the purpose of the particular statute by which it is made. Not all state discrimination laws are unconstitutional, for a class of persons may be singled out for different treatment provided the characteristics which distinguish the class rationally justify the difference in treatment; it only requires that all classifications be based upon substantial differences having a reasonable relation to the object or persons dealt with and to the public purpose sought to be achieved.¹⁵

To put it another way, in order for class legislation to become the law of the state in harmony with the Fourteenth Amendment, the statute must possess each of two indispensable qualities: (1) It must be so framed as to extend to and embrace equally all persons who are or may be in the like situation and circumstances, and (2) the classification must be natural and reasonable, not arbitrary or capricious.¹⁶

By its terms the land law classified persons on the basis of eligibility to citizenship, but in fact it classifies on the basis of race or nationality. This is a necessary consequence of the use of the express racial qualifications found in the Federal Code.¹⁷ Although the Japanese are not singled out by name for discriminatory treatment in the land law, the reference therein to federal standards for naturalization which exclude Japanese operates automatically to bring about the result. This was recognized in *Oyama v. California*, where Chief Justice Vinson, speaking for a majority of the Court, concluded that the alien land law as applied in that case discriminated against a Japanese-American citizen, and that the "only basis for this discrimination was the fact that his father was Japanese and not American, Russian, Chinese or English."¹⁸

Subsequent to the *Oyama case* the Supreme Court condemned the enforcement by state courts of covenants which restrict occupancy of real property on the basis of race or color, and it expressly pointed out that statutes incorporating such restrictions would violate the Fourteenth Amendment.¹⁹

The fallacy in the contention that the Alien Land Laws merely carry a congressional policy into effect appears from a cursory examination of the two totally distinct types of legislation. Congress has enacted a naturalization law, not a property law. Congress regulates admission to citizenship, not ownership of property. In addition, as pointed out by Chief Justice Gibson of the California Supreme Court in *Sei Fujii v.*

¹⁵ *Southern Ry. Co. v. Greene*, 216 U.S. 400 (1910).

¹⁶ C. J. CONSTITUTIONAL LAW §961 and cases there cited.

¹⁷ *Sei Fujii v. California*, 38 Cal. 2d 718, 242 P. 2d 617 (1952).

¹⁸ *Oyama v. California*, 332 U.S. 633, 644 (1948).

¹⁹ *Shelley v. Kraemer*, 334 U.S. 1, 11 (1948).

California, in passing the immigration laws, Congress was exercising its plenary power over immigration and naturalization, and was not inhibited by the watchful eye of the Fourteenth Amendment.²⁰

Therefore, if a state wishes to borrow a federal system of grouping, it must justify the adopted classification in its new setting, and the state's use of the distinction must stand or fall on its own merits.

In determining whether the Alien Land Law meets these constitutional requisites we must look to the decisions of our courts.

In the case of *Oyama v. California*, California brought suit to escheat a section of land taken in the name of D who, at the time of the conveyance to him, was a minor. D's father, an "alien ineligible for American citizenship," was furnished the consideration for the conveyance. Action was commenced under California General Laws Act 261, commonly known as the Alien Land Law. It provides *inter alia* for the escheat of any land transferred with "intent to prevent or avoid" escheat as theretofore provided for, and that there is a prima facie presumption of intent to avoid or prevent escheat whenever a transfer is made for consideration furnished by an "alien ineligible for American citizenship." The California Supreme Court upheld the statute and the escheat of D's land under it. The United States Supreme Court reversed the decision holding that the California statute denied to D the equal protection of the laws and was therefore unconstitutional under the Fourteenth Amendment to the United States Constitution.

Chief Justice Vinson who delivered the opinion for the Court, felt that the burden placed on D of proving a bona fide gift was a denial of equal protection since under similar circumstances where the person furnishing the consideration is not an ineligible alien, a gift is presumed because of the family relation. Quoting the Chief Justice:

"There remains the question of whether discrimination between citizens on the basis of their racial descent is justifiable. Here we start with the proposition that only the most exceptional circumstances can excuse discrimination on that basis in the face of the equal protection clause and a federal statute giving all citizens the right to own land. . . . Assuming, for the purposes of this argument only, that the basic prohibition (Alien Land Law) is constitutional, it does not follow that there is no constitutional limit to the means which may be used to enforce it."²¹

Justice Black, with whom Justice Douglas agreed, in a concurring opinion, stated that he would have placed the decision on the broader ground that the Alien Land Law is unconstitutional in its entirety, primarily because it infringes on the exclusive power of Congress over immigration.

²⁰ *Sei Fujii v. California*, 38 Cal. 2d 718, P. 2d 617 (1952).

²¹ *Oyama v. California*, 332 U.S. 633, 646 (1948).

"If there is any one purpose of the Fourteenth Amendment that is wholly outside the realm of doubt, it is that the Amendment was designed to bar States from denying to some groups, on account of their race or color, any rights, privileges, and opportunities accorded to other groups. I would now overrule the previous decisions of this court that sustained state land laws which discriminate against people of Japanese origin residing in this country."²²

About six months after the *Oyama* decision was announced, *Takahashi v. Fish and Game Comm.*, was decided. It held that a California statute that forbade the issuance of commercial fishing licenses to ineligible aliens was repugnant to the equal protection clause of the Fourteenth Amendment as being an unreasonable and arbitrary classification on the basis of nationality. Mr. Justice Black said:

"That the United States regulates immigration and naturalization in part on the basis of race and color classifications, does not authorize adoption by a state of such classifications to prevent lawfully admitted aliens within its borders from earning a livelihood by means open to all other inhabitants."²³

In *Sei Fujii v. California*, the constitutionality of the Alien Land Law was overturned. The court conceded that classification is proper provided the one class on which the burden will fall manifests to a real extent characteristics different from all other persons. But color, race and creed was not a proper differentiating characteristic on which a classification could be based. The court found that the law was a vicious denial of the equal protection of the law and consequently unconstitutional.²⁴

Following three months after the *Fujii* case was *Haruye Masaoka et al v. People* which stands as the latest word to date on the issue of alien land ownership. In that case five American brothers agreed to build a home for their widowed mother, a Japanese alien ineligible to citizenship. The mother and her sons brought an action against the People of the State of California to determine whether the residential property had escheated to the State by operation of the Alien Land Law. The court's decision in the *Fujii* case was controlling and the Alien Land Law was held unconstitutional because in violation of the Fourteenth Amendment to the Federal Constitution.²⁵

We observe that the California Attorney General, Fred Hauser, in referring to the *Oyama* decision and the present trend of judicial reasoning on the subject and in indicating his intention to dismiss all the escheat cases pending before the California courts, thought that if the

²² *Oyama v. California*, 332 U.S. 633, 649 (1948).

²³ *Takahashi v. Fish and Game Comm.*, 334 U.S. 410 (1948).

²⁴ *Sei Fujii v. California*, 38 Cal. 2d 718, 242 P. 2d 617 (1952).

²⁵ *Haruye Masaoka v. People*, 249 P. 2d 1062 (Cal. 1952).

validity of the law came before the United States Supreme Court the Justices "no doubt would invalidate the law as unconstitutional."²⁶

From the standpoint of the Fourteenth Amendment therefore, it seems clear that the decision of *Terrace v. Thompson* has been weakened by subsequent decisions which appear to invite, rather than foreclose, further consideration of the constitutional issues raised by the Alien Land Law. Under the Fourteenth Amendment, the rights to acquire, enjoy, own and dispose of property are among the civil rights intended to be protected from discriminatory state action and the power of a state to regulate the use and ownership of land, must be exercised subject to the controls and limitations of that amendment. Even if the declared purpose of the Alien Land Law, classifying persons on the basis of eligibility to citizenship is to restrict use and ownership of land to persons who are loyal and who have an interest in the welfare of the state, the classification is still unreasonable, since eligibility or ineligibility to citizenship does not, per se, establish loyalty or lack of loyalty, or absence of interest in the welfare of the state.

II. THE ALIEN LAND LAWS AND THE UNITED NATIONS CHARTER

It is today almost universally admitted that the drafters of the United Nations Charter were concerned with the creation of an organization capable not only of ensuring a lasting peace, but also of obtaining a more universal recognition of fundamental human rights. As a part of this effort, they have inserted the following provision:

"Article 55 . . . The United Nations shall promote: . . . c) universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion."

An examination of the language of Article 55 (c) indicates that, in order to effectively use any of its provisions, some interpretation is necessary. Some of the legal problems presented by the application of this provision to the Alien Land Laws are discussed below in the order in which they arise. The importance of these problems is readily apparent as it is well established that state legislation conflicting with a valid, operative treaty is thereby rendered ineffective.²⁷

The Human Rights Provisions and the Federal Treaty-Making Power

It is clear that no reliance could be placed on the human rights provisions (Article 55 (c)) of the United Nations Charter, unless they

²⁶ San Francisco Chronicle, Jan. 28, 1948, p. 2, col. 6, as reported in 36 CALIF. LAW REV. 320, 324.

²⁷ *Asakura v. City of Seattle*, 265 U.S. 332 (1924); 52 AM. JUR. TREATIES §18, and cases there cited.

constitute a valid treaty in the constitutional sense.²⁸ Our first problem, therefore, involves the determination of whether the provisions in question are within the treaty-making power of the United States.

It is now well-established that the treaty-making power of the United States under Art. II, Sec. 2, Cl. 2 of the Constitution²⁹ is unlimited except in the following two respects: (1) The subject-matter of the treaty must be a proper subject of negotiation between our Government and the governments of other nations, and (2) the provisions of the treaty must not contravene express constitutional provisions, nor materially alter the form of our Federal Government or that of a particular state.³⁰

That the regulation of the rights of aliens is a proper subject of negotiation between our government and the governments of other nations is clearly shown by the following holding of our Supreme Court:

"It is . . . clear that the protection which should be afforded to the citizens of one country owning property in another, and the manner in which that property may be transferred, devised or inherited, are fitting subjects for such negotiation and of regulation by mutual stipulation between the two countries . . ."³¹

An examination of the human rights provisions of the United Nations Charter indicates that no conflict exists between such provisions and any part of the United States Constitution. No change in the form of the Federal or State Government is contemplated or would necessarily result thereunder.

Nor could an objection to the efficacy of the human rights provisions of the United Nations Charter be successfully made on the ground that such provisions invade that field which, under the Tenth Amendment, is reserved to the states. That argument is conclusively disposed of by *Missouri v. Holland*,³² which held that the Tenth Amendment to our Constitution had no application to the treaty-making power of the United States, since that power is expressly granted to the United States and denied to the states.

It is therefore apparent that the human rights provision of the

²⁸ The following constitutional provisions are involved: "He (The President) shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." ART. II, SEC. 2, CL. 2. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding." ART. VI, CL., 2.

²⁹ Cited in full in note 1, *supra*.

³⁰ *Geofroy v. Riggs*, 133 U.S. 258 (1890).

³¹ *Ibid.*

³² 252 U.S. 416 (1920).

United Nations Charter are within the limitations of the treaty-making power of the United States.

The Requirement of Self-Execution

The proposition that a treaty, in order to be operative without legislative implementation must be self-executing, is today too plain to be disputed.³³

The test of when a treaty is self-executing has been the subject of much judicial discussion. An examination of the authorities indicates that the fundamental test on the question is the intent of the contracting parties.³⁴

In attempting to determine the intent of the parties to a particular treaty the courts indulge in a presumption to the effect that treaties are formulated upon deliberate reflection, and that their wording and provisions are carefully chosen. Thus, it will be presumed that no phrase or provision is inserted without an intended effect.³⁵

In examining the provisions involved in the light of this presumption the following conclusions become apparent; the language of Article 55 (c), by reason of the futurity of its tenor, clearly indicates that in and of itself it could not have been intended to be operative without legislative implementation. Article 56, however, provides as follows:

"All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

Under the presumption discussed above, Article 56 must have some intended effect. The only such effect it could logically have is to render the otherwise executory Article 55 self-executing and operative *ipso jure*.³⁶ Any other construction of Article 56 would render it superfluous and meaningless.

It might therefore be concluded that the human rights provisions of the United Nations Charter are self-executing. There are several indications, however, that an opposite conclusion would be more appropriate.

First, one of the difficulties inherent in the argument above expressed is that on the basis of that argument, all of Article 55 would have to be construed as self-executing.³⁷ Under that construction the

³³ Foster v. Neilson, 2 Pet. 253 (U.S. 1829).

³⁴ Valentine v. U.S., 299 U.S. 5 (1936); 52 AM. JUR. TREATIES, §26, and cases there cited.

³⁵ The Nereide, 9 Cranch 388 (U.S. 1815); Rocca v. Thompson, 223 U.S. 317 (1912).

³⁶ A similar conclusion was reached in Professor Quincy Wright in "National Courts and Human Rights—The Fujii Case"; 45 AM. J. INT'L L. 62 (1951).

³⁷ U. N. CHARTER ART. 55, . . . The United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;

member nations and all of their political subdivisions would be immediately obligated to promote far-reaching economic and social measures, which could hardly have been the intent of the signatories.

Second, the conclusion that the human rights provisions of the United Nations Charter are self-executing places an extreme strain on the language of the articles involved. Reading Articles 55 and 56 as a whole, it is apparent that an *in futuro* rather than *in praesenti* result is meant by their phraseology. This seems particularly clear when a comparison is made between the language of Article 55 and several other provisions,³⁸ where the drafters employed *in praesenti* language, and which have been judicially construed as self-executing.³⁹

The conclusion that the human rights provisions of the United Nations Charter are not self-executing therefore seems inescapable in the light of the above. That does not mean, however, that the Charter to that extent is without any effect. The human rights provisions at least morally obligate the United States to implement the purposes expressed in Article 55 by appropriate legislation.⁴⁰

The Meaning of "Human Rights and Fundamental Freedoms"

The next problem in determining the applicability of the human rights provisions of the United Nations Charter to the Alien Land Laws is the question of whether the term "human rights and fundamental freedoms" as used in Article 55 can be construed to include the right to own property.

The following is the universally accepted test in construing and interpreting the meaning of particular treaty terms or provisions:

"In the construction of treaties words are presumed to have been used in the sense of their 'ordinary' or 'normal' meaning unless strong evidence to the contrary appears."⁴¹

In the language of the Supreme Court of the United States:

". . . Compacts between governments or nations, like those between individuals, should be interpreted according to the

b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

c. universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

³⁸ The Following Articles of The U. N. CHARTER clearly appear to be *in praesenti*: ART. 104—"The Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes." ART. 105—"The Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfillment of its purposes."

³⁹ *Curran v. City of New York*, 191 Misc. 229, 77 N.Y.S. 2d 206 (1947); *Balfour, Guthrie & Co. v. United States*, 90 Fed. Supp. 831 (D.C. 1950).

⁴⁰ *Oyama v. California*, 332 U.S. 633 (1946).

⁴¹ 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW, 246, (1943).

natural, fair and received acceptance of the terms in which they are expressed."⁴²

Applying this test, it would seem that the term "human rights and fundamental freedoms" does include the right to hold property. Property rights have, from time immemorial, been regarded as among the most sacred, basic and fundamental rights men can enjoy, by reason solely of the fact that they are human beings. This is clearly expressed by our Supreme Court, which held:

"that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent and unalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects, that induced them to unite in society. No man would become a member of a community in which he could not enjoy the fruits of his honest labour and industry. The preservation of property then is the primary object of the social compact . . ."⁴³

Little doubt, if any, is left by the above as to the fact that "human rights and fundamental freedoms," as used in Article 55 include the right to own property. Should any such doubt exist, however, it is well established that it is appropriate to look to the purpose and meaning of the instrument as a whole and to inquire into the intention of the parties as indicated both at the time of, *and subsequent to, the adoption of the instrument.*⁴⁴

The intent of the signatories of the United Nations Charter on this point was made abundantly clear by their subsequent adoption of the Universal Declaration of Human Rights, which provides:

"Article 17. 1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property."

Subsequent events, however, have cast some doubt on this point. The Covenant on Human Rights, which is presently under consideration by the United Nations, does not contain Article 17 of the Universal Declaration. While the Covenant has never been finally ratified by the General Assembly, it nevertheless renders the intent of the signatories in this regard less clear.

That the conclusion reached above is nevertheless correct seems clear in the light of the circumstances preceding and surrounding the drafting and adoption of the United Nations Charter. As it is clearly stated in its Preamble, the Charter was adopted in the wake of a world

⁴² United States v. D'Auerville et al, 51 U.S. 609, 623 (1850).

⁴³ Van Horner v. Dorrance, 2 Dall. 304, 310 (U.S. 1795).

⁴⁴ 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW, 223 (1943); Factor v. Laubheimer, 290 U.S. 276 (1933).

war of a terrifying impact and proportions. One of the avowed purposes of the Charter was the prevention of the recurrence of such apocalyptic conflicts. Recent history indicates that one of the early symptoms of tyranny and aggression was the deprivation of minority groups of property rights. It is therefore hardly conceivable that the drafters and signatories of the Charter, their recent tragic experience only too clearly in mind, did not intend to prevent such actions.

FINTAN M. FLANAGAN

GEORGE G. LORINCZI

FRANCIS E. SCHLAX