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Our Land is Your Land: Ineffective State Restriction of Alien Land Ownership and the Need for Federal Legislation, 13 J. Marshall L. Rev. 679 (1980)

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OUR LAND IS YOUR LAND: INEFFECTIVE STATE RESTRICTION OF ALIEN LAND OWNERSHIP AND THE NEED FOR FEDERAL LEGISLATION

INTRODUCTION

The recent unprecedented flow of foreign investment into the United States[1] has increased awareness of the dangers of foreign ownership of American resources. In an effort to reduce foreign control of vital American resources, policymakers at various levels of government have attempted to legislate effective guides for foreign investment. However, the lack of coordinated legislative effort has resulted in a chaotic and ineffective structure, which in turn has led to the renaissance of xenophobia[2]—the unreasonable fear of foreigners.[3]

Fear and suspicion of foreign investment in the United States is not new. In pre-revolutionary times, some colonies restricted ownership by citizens of other colonies, a practice which the Constitution of the United States terminated.[4] After the American Revolution, some states expropriated the holdings of

1. The changing circumstances of international trade, particularly increased prices for petroleum, as well as political instability in foreign countries, caused this inflow of capital in 1973. In that year alone, direct foreign investment increased by $3.42 billion, more than a threefold increase over the previous year. This represented a 23 percent rise in the aggregate foreign direct investment in the United States. *See* DEPARTMENT OF COMMERCE, INTERIM REPORT TO CONGRESS: FOREIGN DIRECT INVESTMENT IN THE UNITED STATES 5 (Oct., 1975) [hereinafter cited as FOREIGN DIRECT INVESTMENT].

Foreign direct investments are investments in a host country by a foreign investor having ability to control the operation of the investment. It is distinguished from foreign portfolio investment, which is simply noncontrol purchases of state securities. *See Foreign Direct Investment in the U.S. Real Estate*, 28 U. FLA. L. REV. 491 (1972) [hereinafter cited as U. FLA. L. REV.].

The above government figures do not include real estate investments, because they traditionally have been considered a local activity and any regulation, such as registration, has always been at the local level. *See* Inouye, *Political Implications of Foreign Investment in the United States*, 27 MERCER L. REV. 597 (1976).

2. *See* notes 25-54 and accompanying text *infra*.

3. WEBSTER'S NEW WORLD DICTIONARY 1644 (2d ed. 1970).

4. The right to "take, hold, and dispose of property, either real or personal" is included within the scope of the privileges and immunities clause, U.S. CONST. art. IV, § 2. Corfield v. Coryell, 6 F. Cas. 546, 552 (3230) (C.C.E.D. Pa. 1823) (dictum).

English subjects, treating the British not only as aliens, but also as enemies.[5] Suspicion of foreign investment is sometimes overcome by the economic need for it.[6] As a young nation, the United States depended on European capital to aid in the development of its industry and trade.[7] Even today, those states which view foreign investment as a source of potential prosperity have actively encouraged foreign investment by maintaining offices abroad.[8] Continued ambivalence toward alien investment is predictable in view of these dual attitudes, suspicion and economic need.[9]

The resurgence of alien investment has taken a variety of forms, from banking and securities to trade.[10] The most sensitive area has been alien acquisition of land,[11] particularly farm land.[12] The investment rush has been building for years, and is

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5. *See* Morrison, *Limitations on Alien Investment in American Real Estate*, 61 MINN. L. REV. 621, 622 (1976) [hereinafter cited as Morrison].

6. For a discussion of the motivation behind suspicion and encouragement *see* Gaffney, *Social and Economic Impacts of Foreign Investment in United States Land*, 17 NAT'L RESOURCES J. 377, 389 (1977) [hereinafter cited as Gaffney].

7. *See* Morrison, *supra* note 5, at 622.

8. Numerous individual states have mounted intensive drives to lure foreign capital. For instance, Georgia, Michigan, New York, South Carolina, and Virginia maintain representatives in Brussels, Tokyo, and London. Alabama and North Carolina have offices in Switzerland. Maine and Wisconsin have offices in Frankfurt. *Foreign Investment in the United States: Policy Problems and Obstacles*, II THE CONFERENCE BOARD RECORD 33-34 (1974).

9. *Compare The Foreign Land-Grab Scare*, TIME 40 (Jan. 8, 1979) (xenophobic overreaction) *with The Selling of America*, TIME 71 (May 29, 1978) (foreign capital creating jobs and controversy).

10. *See* Wilner & Smith, *Is Georgia on Their Minds?—Some Legal Aspects of Investment and Trade by Foreign Business Enterprises*, 27 MERCER L. REV. 629, 633-42 (1976) [hereinafter cited as Wilner & Smith].

11. A land purchase is simply a transfer from buyer to seller. One buying land is not directly employing domestic labor. It is a mere swap of situations without a change in the aggregates. This results in freeing up a seller's funds and raising land prices. The seller may buy more land, but land is limited, so there is always a net seller. The national well-being is not affected. A consequence of the foreign capital influx into the land market is a loss of young people's ability to buy land for business and home purposes. *See* Gaffney, *supra* note 6, at 377, 379.

Another consequence is that foreign capital which increases the value in the real estate also increases property taxes. *See The Foreign Land-Grab Scare*, TIME 40 (Jan. 8, 1979).

12. Central Valley farmers in California are apprehensive about increasing foreign control of U.S. farm land. They claim it is becoming nearly impossible for them to pick up additional acreage because foreigners keep raising the price on what is available. Also, because of the increased value in their land, which they don't want to sell, they are subject to a higher property tax which makes it difficult for them to continue possessing the land they do have. Another concern is that young farmers cannot obtain their own apparatus because land costs are soaring. *See* Rubin, *The Selling of California*, CAL. B.J. 409, 410 (Dec. 1978).

Government officials are also apprehensive about expanding foreign

now gaining added momentum as the investors get richer.[13] Land is economically stable, so the foreign investors' desire to purchase land is not precipitated merely by a desire to succeed financially. They are already wealthy; they just want to avoid becoming poorer.[14]

While it is true that more foreigners are acquiring American land than ever before, the number of acres under foreign ownership, at least from a national perspective, is minimal. Of the 1.3 billion acres of private land in the United States, less than one percent, 4.9 million acres, is foreign-owned.[15] However, land

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control of United States farm land. The nation's agricultural exports, about $24 billion in 1977, are a major component of American trade. The government would rather not see foreigners control the source of that trade. *Id.*

13. One factor in this increase in momentum of foreign investment is the dollar slump, which has enabled holders of West Germany's mark, Switzerland's franc, Japan's yen, and other strong currencies to buy a piece of America at bargain prices. *See The Selling of America*, TIME 71 (May 28, 1978). More important, however, is that the United States appears to be the country best suited to ride out the tempest caused by high energy prices, sluggish international growth, and protectionist trade sentiments. *Id.* It also seems to be the nation least vulnerable to the terrorism that is ravaging Italy and haunting West Germany, or the political unrest that is paralyzing Canada, and spreading through the underdeveloped nations. Indeed, it appears that America is selling stability. *Id.*

14. Although foreign investors are seeking stability, there are several other reasons why investment in United States land is given high priority among the economic goals of foreigners. For instance, the prices of real estate are low compared with those prevailing in other parts of the world, and there is a considerable tax advantage allowed foreign investments in United States realty. *See* U. FLA. L. REV., *supra* note 1, at 494.

The situation in Japan illustrates why American property is such a good buy. Because real estate prices are so high in land-scarce Japan, Japanese investors seem grateful to be able to purchase real estate even at prices which seem too high for American investors. For example, in 1974, property in downtown Los Angeles sold at $50 per square foot, but similar land in Tokyo sold at $900 per square foot. *See* Wall St. J., Mar. 5, 1974, at 1, col. 6; *id.*, Jan. 22, 1974, at 1, col. 2.

If an alien is a nonresident, and the investment is not effectively connected with United States trade or business, he can avoid capital gains taxation. I.T.C. §§ 871(b), 882(b). The terms "resident v. nonresident" and "effectively connected" are words of art. *See generally* Alexander, *U.S. Taxation of Real Estate Owned by Nonresident Aliens and Foreign Corporations*, 13 DUQ. L. REV. 37 (1974); Feinschiecher, *Foreign Investment in U.S. Real Estate: The Federal Tax Consideration*, 3 REAL EST. L.J. 144 (1974).

Otherwise, foreigners pay property and income taxes like all Americans (recognizing appropriate deductions). *See* I.R.C. § 871(a)(1) (individual taxpayers); § 881(a)(1) (corporations). For individuals, these deductions exist regardless of whether they are foreigners: (1) casualty or loss deductions, *id.* § 873(b)(1) (*see also id.* § 165(c)(3)); (2) deductions for charitable contributions, *id.* § 170; and (3) one personal exemption, *id.* §§ 151, 142(b)(1).

15. G.L. WUNDERLICH, *Foreign Ownership of U.S. Real Estate in Perspective*, U.S. DEP'T OF AGRICULTURE, ECONOMIC STATISTIC AND COOPERATIVE SERVICE, 1 (1978) [hereinafter cited as WUNDERLICH]. *See* note 62 *infra* (estimate on foreign corporate ownership of land).

purchases are not evenly distributed among the states, and not all land is equally valuable.[16] Therefore, foreign investment can be more significant in one individual state or region.[17] The states are more aware of the problem, and also less capable than the federal government of dealing with it.[18]

When a state attempts to control alien ownership of land within its borders, it has two major objectives: Mechanical and constitutional effectiveness. To be mechanically effective, the state statute must avoid loopholes by specifically and conclusively stating what it covers, and why. To be constitutional, the statute must avoid conflict with due process[19] and equal protection[20] requirements, and with powers granted to Congress by the Constitution.[21]

Present state statutes restricting alien property ownership do not adequately fulfill these objectives.[22] This inadequacy, a result of evolution, places the burden for effective control of alien land ownership on the federal government. While other countries' legislatures have responded to foreign investment by imposing strict laws making foreign ownership the exception to the general rule of exclusion,[23] the United States has just begun

16. *Id.*

17. Although data on foreign ownership are insufficient, there have been a number of highly publicized purchases of farm land by foreign investors which appear to be of great significance: 6,000 acres in Utah; a 12,000 acre farm in Illinois; a 23,000 acre ranch in Wyoming; and 17,000 acres in Georgia. *See* WUNDERLICH, *supra* note 15, at 2.

There has also been significant purchasing of nonagricultural land in New York: Greek-owned Olympia Tower stands across from an Iranian building on Manhattan's Fifth Avenue. In Georgia, the Atlanta Hilton is Kuwaiti owned. In Los Angeles, the Century City Medical Plaza is British and Dutch owned, and the New Otanis Hotel is Japanese owned. The Pennzoil Building and One Shell Plaza in Houston are German owned. *See The Selling of America*, TIME 71-73 (May 29, 1978).

18. *See* notes 56-102 and accompanying text *infra.*

19. *See* notes 138-41 and accompanying text *infra.*

20. *See* notes 103-37 and accompanying text *infra.*

21. *See* notes 142-76 and accompanying text *infra.*

22. *See* notes 56-59, 142-76 and accompanying text *infra.*

23. The laws of three countries, Canada, Mexico, and Saudi Arabia, are illustrative of the types of restrictions on foreign investment which are becoming increasingly prevalent worldwide.

In Canada, the response to foreign ownership has taken the form of provincial laws placing severe restrictions on the sale of land to foreigners. In Ontario province, an alien purchasing land is subject to a land transfer tax amounting to 20 percent of the purchase price, and anyone selling land to a foreigner is taxed up to 50 percent of his profit. *See* Lamont, *Energizing Neo-Mercantilism in Canadian Policy toward State Enterprises and Foreign Direct Investment*, 8 VAND. J. TRANSNAT'L L. 121 (1974) [hereinafter cited as Lamont]; MACINTOSH, FOREIGN INVESTMENT IN CANADA—RECENT TRENDS IN PRIVATE INVESTORS ABROAD: PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS IN 1974, 113-14 (U. Cameron ed. 1975) [hereinafter cited as MACINTOSH]. *See also* Wall St. J., Sept. 9, 1974, at 28, col. 1. In order for

to consider the impact of foreign investment within its borders.[24] The purpose of this article is to explore the various restrictions currently imposed by the states, point out their mechanical and constitutional ineffectiveness, and recommend rational comprehensive legislation by the federal government.

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an alien to purchase more than ten acres of shore front on Prince Edward Island, he must first acquire government approval. *See* Lamont, *supra*, at 121; MACINTOSH, *supra*, at 113-14.

Nova Scotia has taken the most drastic action in Canada by expropriating American-owned property. *Id. See also* Wall St. J., Sept. 9, 1974, at 28, col. 2 (listing land parcels which the province intended to acquire either by settlement or expropriation).

Under Mexico's Foreign Investment Law of 1973, all real property owned by foreigners in Mexico must be registered with the ministry of foreign affairs. *Law for the Promotion of Mexican Investment and to Regulate Foreign Investment*, DIARO OFFICIAL, Mar. 9, 1973 [hereinafter cited as *Act of 1973*]. The investor is required to enter an agreement with the Mexican government, pursuant to the calvo clause, which precludes the foreign investor from involving his country's official assistance in Mexican land disputes. *Id. See generally* Elder, *Expropriation: Hickenlooper and Hereinafter*, 4 INT'L LAW. 611 (1970). Furthermore, the Mexican Constitution prohibits ownership of land within a "prohibited zone." FEDERAL CONSTITUTION OF THE UNITED STATES OF MEXICO, art. 27, § 1. The prohibited zone is all land within 100 kilometers of Mexican land borders and within 50 kilometers of the Mexican seacoast. *Id.* The act provides, in addition to the registration requirement, that aliens be permitted to invest in land trusts of 30 year duration so long as the land is not in the "prohibited zone." *See* Meck, *Land Transfer and Finance in Mexico*, 4 DENVER J.L. & POL. 25, 29 (1974). *See also* Chayet & Sutton, *Mexican Real Estate Transactions by Foreigners*, 4 DENVER J.L. & POL. 15 (1974). Furthermore, foreign equity investment in Mexican business enterprises owning legal title to realty outside the "prohibited zone" is allowed if the foreign participation does not exceed a 49 percent foreign ownership limit imposed by the Act of 1973.

Saudia Arabia is by far the most restrictive of foreign investment. It generally prohibits the ownership of realty by foreigners, but it does grant specific exceptions. If the ministers of agriculture approve, a foreigner can acquire farm land. ROYAL DECREE No. M/22 of 12/7/1390 (Sept. 13, 1970) ¶ 3(b). Foreign enterprises permitted to operate in Saudia Arabia may own realty necessary to their activity, provided a license is obtained from the minister of commerce and industry. *Id.* ¶ 3(c). However, no exceptions are available for real estate located within the limits of the Holy Mosques of Mecca and Medina. *Id.* ¶ 1.

24. In 1976, due to the inadequacy of the information on foreign investment, Congress passed The International Investment Survey Act of 1976, 22 U.S.C. § 3103(d) (1976). The report will examine such problems as the means by which ownership identity can be cloaked; the usefulness of public title and tax records in providing data; and the adequacy and timeliness of comparable methods of reporting in other countries. *Id.* The study's purpose is to improve data on foreign ownership of land, in order to realize its effect. *See* WUNDERLICH, *supra* note 15, at 2. The planned date for completion was late 1979. *Id. See* notes 177, 192 and accompanying text *infra* (discussion of new federal disclosure laws).

Until that report appears, it will not definitely be known who these foreign investors are. However, one commentator concluded that it is the Germans and the Italians who are the heaviest investors, followed by the British, French, Belgians, Canadians, and Dutch, with the Japanese and the Arabs trailing far behind. *The Foreign Land-Grab Scare*, TIME 40 (Jan. 8, 1979).

HISTORICAL ANALYSIS: THE DEVELOPMENT OF INCONSISTENCY

It is difficult to account for the complexity and inconsistency of state laws affecting the alien landholder without examining such laws in light of the historical conditions from which they evolved. As a whole, restrictions developed in response to special pressures that arose in the nineteenth and early twentieth centuries. Thus, state alien land law today represents an accretion of more than a century of lawmaking.

Legislative development occurred in four distinct phases, each a response to the prevailing legal and economic conditions of the times. First, there was the adoption of common law disabilities during the colonial and revolutionary periods. Second, in the early and middle nineteenth century, the strict common law prohibition was replaced by the requirement that an alien become a citizen as a condition of land ownership. Third, at the end of the nineteenth century, federal legislation restricting alien ownership in the frontier states was enacted. Finally, land ownership requirements of the states were once again made restrictive by anti-Japanese legislation predicated on the Naturalization Act of 1913, which itself was revitalized during World War II.

Adoption of Common Law Disabilities

English law permitted aliens to take property by purchase but not by inheritance.[25] This premise was the foundation of early American land law.[26] By the time of the Revolution, the principle that an alien could not acquire good title to land was axiomatic in colonial law. Unless an alien was made a citizen by naturalization, he could not acquire land.[27] To obtain naturalization, the alien had to apply to the colonial legislature, which would issue limited letters of naturalization effective only within

25. 2 W. BLACKSTONE, COMMENTARIES 249-50 (J. Wendall ed. 1847).

26. Originally, under English feudal law, the king granted land to his lords, upon oath of fealty to the king. Designed as it was to secure allegiance to the crown through military service, the system could not tolerate alien land ownership, so it was excluded. *Id.* at 248-49.

27. No other remedy was available, for colonial governments could not adopt laws contrary to those of England. *See* GOBEL, CASES ON DEVELOPMENT OF LEGAL INSTITUTIONS 350 (1930) (English doctrine on relation of colonies to English laws).

Denization, admission to residence with certain rights and privileges, was disfavored by the crown because of colonial liberality in the procurement of it. In 1709, after New York granted that status to a notorious smuggler, the crown curtailed the authority of colonial governors to issue letters of denization. *See generally* 1 W. BLACKSTONE COMMENTARIES 374 (J. Wendall ed. 1847).

that colony.[28] This procedure caused many problems. Many aliens lacked the time, money, and influence needed to sponsor an act through the assembly. Many others who were ignorant of the law purchased land in good faith without realizing that absent legislative authority their titles were defective.

As the alien population grew in the colonies, so did alien land ownership. Lack of good title became a major concern. Relief was sought through bills to quiet and confirm titles derived from aliens. The British Crown was reluctant to authorize these bills, but finally accepted two in 1764.[29]

In 1773, with interest in the colonies growing, the British Crown ordered colonial governors to reject any alien title bill or naturalization measure the colonial assemblies might enact.[30] In effect, the instructions were an absolute prohibition of alien ownership of land. The colonies feared that such restrictive British policies would discourage the immigration of aliens and thus hamper colonial development. A disparity existed: The colonial interest demanded liberal policies on alien ownership of land; the British interest was just the opposite.

In 1776, the colonies addressed the highly restrictive British policies concerning land ownership through the Declaration of Independence. The colonies alleged that the Crown had "endeavored to present the population of these states; for the purpose of obstructing the laws of Naturalization of Foreigners; refusing to pass other to encourage their immigration hither, and raising the conditions of new appropriations of land."

Independence, however, did not completely eradicate restrictions on alien ownership of land. It was natural for the newly independent states to retain the idea of discriminating against aliens regarding landholdings, as it was deeply engrained in the British heritage. Furthermore, the British subjects were now aliens, and there was apparently good reason for

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28. *See* Sullivan, *Alien Land Laws: A Re-Evaluation*, 36 TEMP. L.Q. 15, 26 (1962) [hereinafter cited as Sullivan].

29. It accepted similar bills in New York and North Carolina with visible reluctance. *See* Sullivan, *supra* note 28, at 28.

Governor Moore of New York expressed the need for the bill to the British government. He wrote that its intent was

> . . . to quiet the minds of several people holding estates originally made by aliens, who through their ignorance of the law, had neglected to get naturalized, and though their possessions had passed by several desents to their children and collateral branches born within New York, yet as title was originally deficient, it might in future occasion some difficulties to the possessors [*sic*].

8 O'COLLAGHAN, DOCUMENTS RELATIVE TO THE COLONIAL HISTORY OF THE STATE OF NEW YORK 169 (1857).

30. 1 LABAREE, ROYAL INSTRUCTIONS TO BRITISH COLONIAL GOVERNORS, 1670-1776, at 154 (1935).

colonials to hold on to the British property.[31] Reaction against common law alien restrictions was thus short-lived. The newly formed states soon became more restrictive; however, the laws were flexible. Liberal policies were followed when necessary,[32] but when the need was not so great the common law disabilities were revived or replaced with comparative legislative restrictions. Today, only a few states have retained common law disabilities.[33]

Relaxation of Strict Common Law Restrictions

Judicial interpretation of the Constitution has firmly placed control of land law in the hands of the states.[34] This state control laid the foundation for a hodgepodge of inconsistent laws concerning alien land ownership. The tendency was toward removal of strict common law restrictions. This process accelerated after the Civil War, until in 1880 aliens could hold land on the same terms as citizens in over half the states.[35] A major impetus towards leniency was the country's desire to use alien land ownership as a means of western expansion.[36] However, as foreigners became more numerous, the frontier population became fearful of outside influence and control.[37] Again, in response to this fear, the trend toward raising the alien to the status of citizen for the purpose of land ownership was reversed in the 1880s and 1890s, and would not return until the mid-1900s.[38]

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31. During the revolution, many states imposed landholding restrictions which applied not only to loyalists but also to persons whose places of birth and residence clearly established they were British subjects. A few states enacted statutes declaring British subjects to be aliens, and then treated them in the same manner in which the British treated aliens. The remainder of the states treated British subjects as enemy aliens under the common law. *See* Sullivan, *supra* note 28, at 29 n. 62.

32. Ohio was the first state to treat aliens as citizens in landholding matters. 1804 OHIO LAWS at 123.

33. *See* note 56 *infra*.

34. *See* Chirac v. Chirac, 15 U.S. (2 Wheat.) 251, 270 (1817). *See also* Hauenstein v. Lynham, 100 U.S. 483, 484 (1880).

35. *See* Sullivan, *supra* note 28, at 29.

36. *See* Morrison, *supra* note 5, at 622.

37. Some of the aliens purchasing land were members of the British nobility who began acquiring large ranches. One ranch, the XIT, controlled 3,000,000 acres in Texas. Another, the Matador Land and Cattle Company, held over 1,000,000 acres in the same state. *See* Sullivan, *supra* note 28, at 30-32. *See also* NORDYKE, CATTLE EMPIRE (1949); WARREN & WARREN, THE MATADORS, 1879-1951 (1952), for descriptions of the operation of these large English-controlled cattle companies. The xenophobia of this period was promoted by fears of foreigners seeking to establish themselves as landlords, fear that statehood could be jeopardized, and fear of becoming an economic colony of Great Britain. *See* Morrison, *supra* note 36, at 625.

38. During this period eight states which had granted aliens the same

Federal Legislation in Frontier States

Congress responded to fear of alien land ownership by enacting the Territorial Land Act of 1887, which prohibited extensive alien land holdings unless the resident alien had applied for citizenship.[39] Other federal laws also restricted acquisition of homesteads or other federal land by aliens or alien-controlled businesses.[40] Most of these federal laws are not significant today, for the territories covered have since become states.[41]

The newly-formed midwestern states enacted laws resembling the Territorial Land Act,[42] and their anti-alien attitude was sanctioned by the courts.[43] In some states, these laws remain on the books today.[44]

Anti-Japanese Legislation Predicated on the Naturalization Act of 1913

In the early part of the twentieth century, anti-Japanese sentiment developed in the Pacific coast states.[45] The pressure for restriction on Japanese land ownership, in which race prejudice and economic motives blended almost indistinguishably, centered in California, which had abolished the condition of citizenship for landholding.[46] California reintroduced a modified citizenship requirement in 1913.[47] The law seized upon a peculiarity in the federal nationality laws which barred Oriental

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treatment as citizens adopted restrictions (Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, and Wisconsin). Three other states (Idaho, Indiana, and Texas) added to their existing restrictions. *See* Sullivan, *supra* note 28, at 31 n.68. *See also* note 57 *infra*.

39. 48 U.S.C. §§ 150-57 (1970).

40. 43 U.S.C. § 161 (1970); 43 C.F.R. § 2511.1 (1974) (homesteads); 43 U.S.C. § 315 (1970); 43 C.F.R. §§ 4121.1-1(a)-(c) (1974) (federal grazing land). *See* note 97 *infra* (2,600 acts of Congress dealing with property rights on federal public lands).

41. *See* Mining Law of 1872 § 1, 30 U.S.C. § 22 (1970). However, restrictions on alien ownership of federal mineral lands have continuing importance. They are applicable to all mineral deposits except petroleum deposits and a few other minerals.

42. *See* note 38 *supra*.

43. *See, e.g.*, Frick v. Webb, 263 U.S. 326 (1923); Webb v. O'Brien, 263 U.S. 313 (1923); Porterfield v. Webb, 263 U.S. 225 (1923); Terrace v. Thompson, 263 U.S. 197 (1923) (denying aliens the right to acquire and own land); Pastore v. Pennsylvania, 322 U.S. 138 (1914); McCready v. Virginia, 94 U.S. 391 (1876) (limiting the right of noncitizens to exploit states' natural resources).

44. *See* note 58 *infra*.

45. Japanese-controlled farms in California had increased from 4,698 acres in 1900 to 99,254 acres in 1910, reaching a peak of 321,276 acres in 1920. *See* Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CALIF. L. REV. 61, 68, 71 (1947) [hereinafter cited as Ferguson].

46. *See* Blythe v. Hinckley, 180 U.S. 333, 337 n.1 (1901).

47. 1913 CAL. STATS. § 206.

persons from naturalization, and stated the prohibition of land holding in terms of alien ineligibility for citizenship under United States law.[48]

In 1923, the United States Supreme Court ruled that the California statute was constitutional. The basis of the Court's ruling was that this statutory discrimination against aliens rested upon a reasonable classification and did not conflict with the due process of law and equal protection guarantees of the fourteenth amendment.[49] As a result, the California act rapidly became the model for a proliferation of state laws creating restrictions based upon an alien's ineligibility for citizenship under federal law.[50]

World War II, which produced new prejudices against the Japanese, prompted additional states to enact restrictive statutes.[51] However, after the war, the significance of these restrictions began to wane. In 1952, Congress passed an amendment to the Federal Immigration Law[52] which eliminated the class of "ineligible aliens,"[53] and state laws which based exclusion on ineligibility for United States citizenship consequently became meaningless. Shortly thereafter, the California legislature, which had been at the forefront in advocating heavy restrictions, repealed its act and provided compensation for those whose land had been forfeited.[54] Nevertheless, many states still have laws in effect that restrict alien ownership of land and are based upon the federal immigration law.[55]

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48. This avoided patent discrimination against the Japanese. *See* Morrison, *supra* note 36, at 27 n.30, for a discussion of the development of immigration laws.

49. Porterfield v. Webb, 263 U.S. 225 (1923).

50. Within five years, Oregon, Idaho, Montana, Arizona, Kansas, Texas, and Delaware adopted similar statutes, while New Mexico and Louisiana went further, incorporating restrictions on ineligible aliens into their constitutions. *See* Sullivan, *supra* note 28, at 34.

It is important to the understanding of xenophobia to note that restrictions were not only strong in the Pacific states, but were in existence in states such as Kansas, whose populations included few Japanese. *See* Sullivan, *supra* note 28, at 34. *See also* KAN. STAT. § 59-511 (1939) (restricted ownership by aliens to those who were eligible for citizenship, thereby incorporating the immigration law which excluded Japanese).

51. *See* Sullivan, *supra* note 28, at 34.

52. Immigration and Nationality Act, §§ 311, 477, 66 Stat. 239 (1952) (codified at 8 U.S.C. § 1422 (1970)).

53. There are still some insignificant groups of aliens ineligible for citizenship. *See* note 59 *infra*.

54. 1953 CAL. STAT., at 1816. The act was repealed after the state supreme court held that the alien land law was invalid as violating the fourteenth amendment in Fujii v. State, 38 Cal. 2d 718, 242 P.2d 617 (1952).

55. *See* note 59 *infra* (present state statutes based upon federal immigration law).

PRESENT STATE ALIEN LAND LAWS

From their history, it is evident that state restrictions were a hasty response to needs that were believed to be compelling at the moment. Most anti-alien legislation found acceptance only during times of strong public emotion: the Revolution; the frontier period; and the anti-Japanese agitation. Each state legislature reacted in a different manner, at a different time, which resulted in ad hoc treatment of alien land ownership. This historical development produced four broad categories of state restrictive laws: (1) restrictions which adopt the common law rule of general prohibition;[56] (2) restrictions which have replaced the strict common law prohibition with the requirement of citizen status for the purpose of land ownership;[57] (3) restric-

56. Group 1: Six jurisdictions have adopted the general common law prohibition, with the exception of allowing only alien residents to own property. For Alaska and Hawaii, the Alien Land Law, 48 U.S.C. §§ 1501 *et seq.* (1974), which prohibits aliens from owning land in their territories, was in effect at statehood and was never repealed. *See* Sullivan, *supra* note 24, at 20 n.26. Alaska itself has not imposed any restrictions. In Hawaii, there are no express restrictions, except in regard to a residential lot on the island of Oahu, in which case the purchaser must be a United States citizen or declarant alien who has resided in the state for five years or more. HAW. REV. STAT. §§ 206-09, 516-33 (Supp. 1979).

The four other states are Mississippi, New Hampshire, New Jersey, and Oklahoma. *Compare* MISS. CONST. art. 4, § 84 (the legislature "shall enact laws to limit, restrict, or prevent the acquiring and holding of land in [Mississippi] by non-resident aliens") *with* MISS. CODE ANN. § 89-1-23 (1974) (nonresident aliens may not acquire or hold land except through enforcement of a lien).

Compare N.H. REV. STAT. ANN. § 477:20 (1968) (allowing resident aliens to acquire property in same manner as citizens) *with* Lazarou v. Moravos, 101 N.H. 383, 143 A.2d 669 (1958) *and* Hanafin v. McCarthy, 95 N.H. 36, 37, 57 A.2d 148, 149 (1948) (New Hampshire Supreme Court expressed view that common law restrictions still apply to nonresident aliens despite statute).

Cf. N.J. STAT. ANN. § 46:3-18 (West Supp. 1979) ("alien friends" have the same rights as citizens with respect to real estate). *Compare* Caperell v. Goodbody, 132 N.J. Eq. 554, 29 A.2d 563 (1942) (defining "alien friends" as subjects of a foreign state at peace with the United States) *with* an amendment to § 46, 3-18 in 1943, N.J. LAWS 1943 ch. 145 § 1, at 395 ("friendly alien" defined to exclude nonresident aliens).

Compare OKLA. CONST. art. 22, § 1 (aliens who are not United States citizens or bona fide Oklahoma residents are prohibited from acquiring or owning land) *with* OKLA. STAT. ANN. tit. 60, §§ 121-27 (1971) (resident aliens assured of right to acquire property and nonresidents allowed to hold personal property if such rights are accorded United States citizens by laws of nation to which alien belongs, or by treaty).

57. Group 2. In the following 27 jurisdictions, strict common law prohibitions have been replaced by assimilation of aliens to citizenship status: Alabama, ALA. CODE § 35-1-1 (1975); Arizona, ARIZ. REV. STAT. ANN. ch. 129, § 1 (1978); Arkansas, ARK. STAT. ANN. § 50-301 (1971); California, CAL. [CIV.] CODE § 671 (West 1954); Delaware, DEL. CODE ANN. tit. 25, § 306 (1974); District of Columbia, D.C. CODE ANN. § 34-1501 (1973); Florida, FLA. CONST. art. I, § 2 (1968), FLA. STAT. ANN. § 732.1101 (Supp. 1977); Georgia, GA. CODE ANN. § 79-303 (Supp. 1979); Idaho, IDAHO CODE § 55-103 (1957); Maine,

tions which limit the amount and time of holding;[58] and (4) restrictions which depend upon the citizen eligibility status of the aliens.[59]

ME. REV. STAT. tit. 33, § 451 (1978); Maryland, MD. [REAL PROP.] CODE ANN. § 14-101 (1975); Massachusetts, MASS. GEN. LAWS ANN. ch. 184, § 1 (1970); Michigan, MICH. COMP. LAWS ANN. §§ 26.1105, 26.1106 (1970); Nevada, NEV. REV. STAT. § 111.055 (1973); New Mexico, N.M. STAT. ANN. § 70-1-24 (1953); New York, N.Y. [REAL PROP.] LAW § 10(2) (McKinney 1968); North Carolina, N.C. GEN. STAT. § 64-1 (1975); North Dakota, N.D. CENT. CODE § 47-01-11 (1978); Ohio, OHIO REV. CODE ANN. § 2105.16 (Page 1976); Rhode Island, R.I. GEN. LAWS § 34-2-1 (1969); Tennessee, TENN. CODE ANN. § 64-201 (1976); Texas, TEX. REV. CIV. STAT. ANN. art. 166a (Vernon 1969); Utah, UTAH CODE ANN. § 75-2-112 (1975); Vermont, VT. CONST. ch. II, § 362; Virginia, VA. CODE § 55-1 (1974); Washington, WASH. REV. CODE § 64.16.005 (Supp. 1979); West Virginia, W. VA. CODE § 36-1-21 (1966).

58. Group 3. The following nine jurisdictions have restrictions which limit the amount and/or time of holding: Illinois, ILL. REV. STAT. ch. 6, §§ 1-2 (Smith-Hurd Supp. 1978) (limits aliens' right to hold realty for six years or until alien reaches majority); Indiana, IND. CODE ANN. § 32-1-8-1 (Burns 1979) (limits aliens' right to hold realty in excess of 320 acres to five years from date of acquisition); Kentucky, KY. REV. STAT. ANN. §§ 381.300, 381.320 (Baldwin 1970) (limits nonresident aliens' right to hold realty to eight years after acquisition, and resident aliens' right to 21 years); Missouri, MO. ANN. STAT. § 442.560(1) (1978) (limits nonresident aliens to acquisition of five acres of agricultural land); Nebraska, NEB. REV. STAT. § 76-402 (1976) (limits aliens' right to hold realty to five years); Pennsylvania, PA. STAT. ANN. tit. 68, § 32 (Purdon 1965) (limits alien rights to hold realty in excess of 5,000 acres or net annual income of $20,000); South Carolina, S.C. CODE § 27-13-30 (1976) (limits aliens' right to hold realty in excess of 500,000 acres) (*see* note 72 *infra* for a discussion of the history behind this statute); South Dakota, S.D. COMP. LAWS ANN. §§ 43-2-9, 43-2A-1-43-2A-7 (Supp. 1979) (a nonresident alien may not acquire more than 160 acres); Wisconsin, WIS. STAT. ANN. § 170.02 (West 1977).

59. Group 4. The following eight jurisdictions restrict ownership of realty according to the alien's status: Colorado, COLO. CONST. art. II, § 27 (bona fide resident aliens are authorized to acquire property); Iowa, *compare* IOWA CONST. art. 1, § 22 (alien residents have the same rights as citizens) *with* IOWA CODE 1977, § 567, *as amended* 1979 (House File 148 §§ 2, 4) ("[a] nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, shall not purchase or otherwise acquire agricultural land in this state"); Kansas, KAN. STAT. ANN. § 59-511 (1979) (aliens eligible for citizenship may acquire property in the same manner as citizens; all other aliens may "transmit and inherit" only as provided by federal treaty); Louisiana, LA. CONST. art. 19, § 20 ("aliens eligible for citizenship"); Minnesota, MINN. STAT. § 500.221(2) (Supp. 1979) (only citizens and resident aliens can acquire an interest in agricultural land); Montana, MONT. REV. CODES ANN. § 91 A-2-111 (1977) (right of an alien to inherit land is dependent upon existence of a reciprocal right in county where alien resides); Oregon, OR. REV. STAT. § 517.044 (1977) (aliens may not buy state land unless they are eligible for citizenship); Wyoming, WYO. STAT. § 34-15-101 (1977) (a nonresident alien may acquire property only if a reciprocal right exists for a United States citizen in nation of the alien citizenship).

The Immigration and Nationality Act of 1952, 8 U.S.C. § 1422 (1970), eliminated racial restrictions on eligibility. This left only three classes of aliens who were ineligible for citizenship: (1) those opposed to organized government or favoring totalitarian forms of government; (2) deserters from the armed forces; and (3) persons relieved from service in the armed forces due to alienage. *Id.* Because of these insignificant limitations on citi-

These restrictions, no two of which are the same, have generated an overwhelming confusion in the minds of American policymakers and alien investors. As a result, state laws have inhibited the development of a uniform national policy and a consistent foreign relations policy in the area of alien ownership of land.[60]

Lack of uniformity in today's land laws creates a trap for the unwary. Aliens who have the financial and intellectual power can overcome the restrictions in a variety of ways; those without such powers cannot. Worst of all, those who do overcome the state restrictions can do it so well that nobody knows who owns what.[61] The mechanical effectiveness of state restrictions is usually overcome through the use of (1) corporate entities, (2) inheritance laws, and (3) trusts.

Corporate Restrictions

Absent the power to hold title to land directly, an alien may bypass specific restrictions on individual investors by controlling land indirectly through use of a corporation. Thus, land laws which are aimed at the individual alien investor lose their effectiveness unless counterpart legislation affecting corporations exists as well.

The corporation is the most common form of business enterprise in the United States,[62] so it is surprising that only a few states have enacted substantial restrictions on land acquisition by corporations.[63] This scarcity of state restrictions on corpo-

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zenship eligibility, state restrictions based on eligibility for citizenship are neutralized.

60. *See* H. Zoritsky, *Foreign Ownership of Property in the United States: Federal and State Restrictions*, C.R.S. 1, 15-24 (July 21, 1978).

61. *See* notes 177-92 and accompanying text *infra*.

62. It is estimated that over 570 corporations own slightly less than 60 million acres. This figure includes 5.7 million acres of agricultural land, which is more than the estimated amount of all land owned by alien individual investors. *Data on Foreign Ownership of Property within the United States: Hearings on H.R. 7411 before the Subcommittee on Census and Population*, 95th CONG., 1ST SESS. 20 (1977) [hereinafter cited as *Data on Foreign Ownership*]. *See* note 15 and accompanying text *supra*.

63. Four states (Alaska, Iowa, Nebraska, and South Carolina) exclude from most land ownership corporations in which aliens hold a majority of the stock: ALASKA STAT. § 38.05, 190 (1977) (in acquiring mining rights, no more than 50 percent of its stock may be owned or controlled by aliens who could not own the stock directly); IOWA CODE § 491.67 (1977) (corporations incorporated outside the United States and all other corporations in which half or more of the stock is owned by nonresident aliens are prohibited from acquiring title to or holding agricultural land); NEB. REV. STAT. §§ 76-402—76-414 (1976) (a corporation may hold land within three miles of a village or city limits if the majority of its directors or managers are aliens, or if a majority of its stock is owned by aliens); S.C. CODE §§ 27-13-10, 27-13-30, 27-13-40 (1976) (no alien or alien-controlled corporation may own more than 500,000

rate ownership of land is best explained by the state of corpo-

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acres of land). Because of the enormous figure of 500,000, the legislature in effect drafted a meaningless statute. *See* note 72 *infra* (history behind the legislation).

Drafters of future legislation should be careful in their choice of words. "Majority" or "50 percent" are insufficient restrictions because one can have control of a corporation with 20 or 30 percent ownership. The drafter should use the word *control*, for it is much broader.

Wisconsin applies a stricter prohibition. WIS. STAT. § 710.02 (1977) (no corporation in which more than 20 percent of the stock is held by a nonresident alien may acquire more than 640 acres). Although 20 percent is more restrictive than majority, it is ineffective because Wisconsin does not require the corporation to report its land holdings.

Six states, Iowa, Minnesota, Missouri, North Dakota, Oklahoma, and South Dakota, prohibit foreign corporations from holding farm land or engaging in farming. IOWA CODE § 567 (1977) *as amended* 1979 (House File 148 §§ 2, 4) ("[a] nonresident alien, foreign business or foreign government, or an agent, trustee or fiduciary thereof, shall not purchase or otherwise acquire agricultural land in this state"). MINN. STAT. § 500.24 (1979) (corporations are prohibited from farming or acquiring real estate used for farming or capable of being used for farming). This concept is very broad because it may affect non-agricultural activities as well. However, statutory exceptions permit industrial development on agricultural land acquired by corporations, subject to limitations. *See, e.g., id.* § 500.24(2)(h) (1979). MO. ANN. STAT. § 442.560(2) (1978) (corporations not engaged in farming before Sept. 28, 1975 are prohibited from farming and acquiring any interest in agricultural land subject to exceptions). N.D. CENT. CODE 10-06-01 (1976) (domestic and foreign corporations are prohibited from engaging in farming or agriculture). OKLA. STAT. ANN. tit. 18, § 951 (West Supp. 1979) (corporations may not engage in farming or ranching except in special circumstances); S.D. CONST. art. XVII, § 7 (domestic and foreign corporation ownership of farm land is prohibited).

Although these restrictions are severe, they will be ineffective unless they are coupled with the requirement of an annual disclosure. However, only those of Iowa, Minnesota, and North Dakota are drafted in a manner which would inhibit the formation of a personal holding corporation to circumvent the statutes' applicability to individuals.

Iowa, IOWA CODE 1977, § 561, *as amended* 1979 (House File 148 §§ 2,4), and North Dakota, N.D. CENT. CODE § 10-06-01 (1976), have express prohibitions against personal holding corporations. Minnesota requires a majority of the shareholders to reside on the farm or actively engage in farming. MINN. STAT. § 500.24(1)(9) (1979). Three states, Arizona, Connecticut, and West Virginia, require a certificate of authority before the corporation can acquire real estate. ARIZ. REV. STAT. ANN. § 37-240 (1978); CONN. GEN. STAT. ANN. § 47-57 (1958); W. VA. CODE § 11-12-78 (1966) (corporations which acquire more than 10,000 acres of land must obtain a license for which a tax of five cents per acre over 10,000 would be charged).

The legislators can constitutionally exclude corporations from certain businesses. The Supreme Court, in Railway Express v. New York, 336 U.S. 106 (1949), held that such classification of corporations will be judged by the lenient "rational basis" test, since no fundamental human rights are involved. The Court expressed an unwillingness to substitute its economic judgment for that of the legislature.

Kentucky, Nebraska, and Texas restrictions provide that a corporation may only acquire land necessary for its business. KY. REV. STAT. § 271A 705(1) (Supp. 1976); NEB. REV. STAT. §§ 76-402—76-414 (1976) (corporations may hold land necessary for business as common carriers or public utilities,

rate law at the time restrictions against alien individuals were developed.[64]

Unlike individuals, corporations which are not engaged in interstate commerce have only those rights that are conferred upon them by the laws of the state in which they operate.[65] Apparently, legislatures thought they could limit alien corporate land ownership by simply excluding undesired corporations, or denying such corporations the right to own land.[66] However, at the time restrictions on individual ownership were developed the number of corporations was negligible. Today, with extensive growth of the corporate form of doing business, states cannot entirely screen those corporations admitted to do business. Furthermore, corporate purpose clauses have expanded to allow almost any legitimate purpose,[67] and corporate land ownership often is expressly authorized.[68]

The result is that if the alien is not free to own land directly, he may be able to own it indirectly in most areas in the United States by employing the corporate form. Because of ineffective drafting of statutes, poor determination of which corporations are to be restricted,[69] a lack of express prohibitions against personal holding corporations,[70] and the failure to buttress restrictions with strict disclosure laws,[71] the serious alien investor

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or for manufacturing plants, petroleum service stations, or bulk stations); TEX. REV. CIV. STAT. ANN. art. 1302-4.01-04 (Vernon Supp. 1978).

Apparently, these states want to avoid losing corporations and the potential prosperity they will bring. A corporation would be reluctant to invest millions in a business operation in a state where it cannot own the land on which the business is situated. Wilner & Smith, *supra* note 10, at 631 n.II.

64. For an analysis of the historical development of state restrictions on individual alien ownership of land, *see* notes 25-54 and accompanying text *supra*.

65. *See* Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1869); Bank of Augusta v. Forle, 38 U.S. (13 Pet.) 519 (1839).

66. *See* note 63 *supra*.

67. *See, e.g.*, A.B.A.-ALI MODEL BUS. CORP. ACT § 3 (1974) ("any lawful purpose or purposes, except for the purpose of banking or insurance").

68. *See, e.g., id.* § 4(d).

69. *See* note 63 *supra*.

70. *Id.*

71. Several states require annual disclosure by corporations in order to be kept apprised of their situations. *Agricultural Foreign Investment Disclosure Act*, P.A. 81-187, 1979 Ill. Legis. Serv. (West) (any legal entity must report any interest acquired in agricultural land in this state); IOWA CODE §§ 172A, 5679 (Supp. 1978); MINN. STAT. § 500.24 (1979) (aliens, corporations, and limited partnerships are required to register land holdings and make certain annual disclosures); KAN. STAT. § 17-5901 (1978); MO. ANN. STAT. § 442.560(2) (1979); NEB. REV. STAT. § 76-1506 (1976); OR. REV. STAT. §§ 57.755, 57.757 (1977).

Without strict disclosure laws the restrictions on corporate holdings of real estate are ineffective. Minute Maid Corporation is a case in point. In Florida, Minute Maid Corporation owns the largest part of the citrus farms. The Minute Maid Corporation is owned by the Coca-Cola Corporation, but

would face only a small obstacle to land ownership in those states that have corporate restrictions. Even in states where the restrictions seem to present an impossible obstacle, large foreign investors, particularly corporations, have been able to obtain legislative exemption from the law.[72] This practice will continue unless a uniform federal policy is adopted.

Inheritance

Inheritance is another means of alien acquisition of land. A dozen states at present impose restrictions on inheritance of real estate by aliens.[73] While these restrictions do not directly affect alien investment, they do discourage potential investors—alien or not—who wish to devise their land holdings to aliens.

Most of the constraints on inheritance fall into two broad categories. First, there are those that prohibit inheritance only if the alien's nation would deprive that person of inheritance rights;[74] second, there are those that prohibit inheritance only if the alien's nation would not grant a reciprocal inheritance right to a United States citizen.[75] Some states, to avoid discouraging investors, allow an alien heir a long time to dispose of property which would otherwise be held in violation of general restrictions on alien ownership.[76]

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we do not know how much of the Coca-Cola Corporation is owned by foreign investment. Thus, we do not know how much of the citrus farms could be controlled through stock ownership of a very large corporation that owns another corporation that owns the land. *See Data on Foreign Ownership*, *supra* note 62, at 7. Therefore, any effective restriction on corporate ownership would need a disclosure law which would inform the state not only of the acreage which the corporation owns, but also of who owns the corporation. *See* notes 177-92 and accompanying text *infra* (discussion of the federal disclosure acts.).

72. In 1956, a special session of the South Carolina legislature increased the maximum amount of land an alien might hold in the state from 500 to 500,000 acres. S.C. ACTS No. 1131 (1956). The reported reason for the increase was to obtain location within the state of a Bowater Paper Corporation pulpmill. *See* Wall St. J., May 31, 1955, at 17, col.4.

73. *See* notes 74-76 *infra*.

74. Connecticut, CONN. GEN. STAT. ANN. § 47-57 (West Supp. 1978); Massachusetts, MASS. GEN. LAWS ANN. ch. 206, § 27B (1969); New Jersey, N.J. STAT. ANN. § 3A: 25-10 (1953); New York, N.Y. SURR. CT. PROC. ACT. § 2218(3) (McKinney Supp. 1978); Wisconsin, WIS. STAT. § 863.37 (1973).

75. Iowa, IOWA CODE § 567 (1977) *as amended* 1979 (House File 148 § 6); Nebraska, NEB. REV. STAT. § 4-107 (1974); North Carolina, N.C. GEN. STAT. § 64-3 (1975); Wyoming, WYO. STAT. § 2-3-107 (Supp. 1978).

76. *Compare* KY. REV. STAT. ANN. § 381.300 (Baldwin 1970) (limiting right to acquire land to only those aliens who have declared their intention to become citizens) *with* KY. REV. STAT. ANN. § 381.330 (Baldwin 1970) (nonresident aliens who have not declared their intention to become citizens inherit property, but must dispose of it within eight years). *Compare* OKLA. STAT. ANN. tit. 60, §§ 121-22 (1971) (no alien may hold land unless he is a bona fide resident of the state) *with* OKLA. STAT. ANN. tit. 60, § 123 (1971)

Acquisition of Property by Trust

Trust law does not specifically deal with aliens. However, the trust concept was used in England to circumvent the strict prohibition against alien land ownership.[77] Today, a similar trust concept can be used to overcome restrictions on individual and corporate forms of alien ownership of land.[78] The situation in Illinois provides a good example.

Under present Illinois law, title to real property, both legal and equitable, may be conveyed to a trust while the beneficial control of the land is retained by the alien.[79] This can be accomplished because Illinois alien land law[80] does not apply to a beneficial interest, which is considered personal property,[81] and Illinois law does not restrict aliens' rights to personal property.[82] This interpretation of trust law was approved by the Illinois Supreme Court.[83]

Use of the land trust is not confined to Illinois. There is nothing unique about the land trust that would set it apart from a regular trust. A land trust is created where a deed to the trustee, commonly labeled a deed in trust, apparently gives a trustee full power to deal with the real estate.[84] However, the

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(nonresident aliens may inherit land, but they must dispose of it within five years).

77. *See* Morrison, *supra* note 5, at 623.

78. The trust has recently become a more familiar conveyancing device to nonresident aliens because it provides both confidentiality and tax benefits. *See* W.B. Warren, *Personal Trusts for Non-Resident Aliens*, 115 TRUSTS & EST. 600 (Oct. 1976). No state specifically restricts the use of a trust to circumvent its statute against alien ownership of property, and none expressly limits the right of aliens to own personal property in the state. *See* notes 56-59 *supra*.

79. *Trust and Trustees Act*, ILL. REV. STAT. ch. 148, § 71 (1977).

80. ILL. REV. STAT. ch. 6, §§ 1-2 (1966).

81. *Id.* ch. 148, § 71.

82. "Aliens have full right to acquire and hold land, either by purchase or inheritance or otherwise, but must dispose of it within 6 years." *Id.*

83. Vlahos v. Andrews, 362 Ill. 593, 1 N.E.2d 59 (1936). In *Vlahos*, the alien beneficiaries brought an action against trustees to compel conveyance of the real estate that was the subject of the trust. The trust agreement provided that a citizen was to hold property for the aliens and to reconvey upon naturalization of one of the alien owners. The deed whereunder the property was conveyed to the new citizen was held a valid enforceable trust as against the contention that the deed was an illegal agreement to defraud the state of the opportunity to declare forfeiture of the aliens' property. *Id.* at 597, 1 N.E.2d at 61.

84. The public records appear as though the trustee's powers are complete. Actually, the powers of the trustee are restricted by a trust agreement executed previously to or concurrently with, and incorporated into, the deed in trust, whereby the beneficiary retains full powers of management and control which permits the trustee to deal with the property only when so directed by the beneficiary. GARRETT, LAND TRUSTS, CHICAGO TI-

beneficiary of the trust controls the rights and duties of the trustee, in effect controlling the land.

The duties imposed on the trustee maintain the validity of this trust relationship. Under Illinois law, the beneficiary may direct the trustee to convey land. The trustee must also sell at public sale any property remaining in the trust within a specified time, usually twenty years.[85] These duties classify the trust as active, so that the Statute of Uses does not nullify the trustee-beneficiary relationship.[86] Illinois decisions which have upheld land trusts involving these limited duties applied well-established legal principles.[87] This reliance on common law minimizes the distinction between a statutory land trust and a regular common law trust agreement. Therefore, it appears that the absence of a statutory land trust in a state would not prevent an alien from circumventing the state's land ownership restrictions.

Virginia, Florida, Indiana, and North Dakota have adopted the liberal land trust concept of Illinois.[88] Other states, although they have adopted the land trust concept, require more duties on the part of the trustee.[89] In several states, land trusts are being used without statutory or case law guidance.[90] An alien can evidently avoid direct land restrictions by holding land in compliance with the trust law of any state he chooses.

It becomes obvious that state legislation must be broad and inclusive. The drafter of future legislation must determine

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TLE AND TRUST COMPANY (Booklet) 1,2 (1971) [hereinafter referred to as GARRETT].

For an analysis of land trusts *see* Turner, *Some Legal Aspects of Beneficial Interests under Illinois Land Trust*, 39 ILL. L. REV. 216 (1945). *See also* Baker & Schulz, *The North Dakota Land Trust*, 45 N.D. L. REV. 77 (1968); Cowardine, *Land Trusts, Some Problems in Virginia*, 7 WM. & MARY L. REV. 368 (1966); Ford, *Land Trust Act*, 18 U. MIAMI L. REV. 698 (1964).

85. *See* GARRETT, *supra* note 84, at 10. *See also* ILL. REV. STAT. ch. 148, § 71 (1977).

86. Breen v. Breen, 411 Ill. 206, 103 N.E.2d 625 (1952); *see* Chicago Title & Trust Co. v. Mercantile Bank, 300 Ill. App. 329, 20 N.E.2d 992 (1939) (thorough discussion of the Statute of Uses in connection with land trusts). *See* note 87 *infra*.

87. The Statute of Uses was transplanted from England to the United States and is the law of Illinois. Breen v. Breen, 411 Ill. 206, 103 N.E.2d 625 (1952); Kirkland v. Cox, 94 Ill. 400 (1880). The effect of the Statute of Uses is that the holder of the use, the beneficiary, becomes the holder of the legal estate of the same character as the equitable or use estate which he formerly owned. For a discussion of the history of the Statute of Uses *see* 5 AMERICAN LAW OF PROPERTY § 1.16 (A.J. Casner ed. 1952) (Professor Simes, author).

88. VA. CODE § 55-17.1 (1974); FLA. STAT. § 689.071 (1973); IND. CODE ANN. tit. 30, § 13 (1971); N.D. CENT. CODE § 54-03-02 (Supp. 1967).

89. *See* GARRETT, *supra* note 84, at 2.

90. *Id.*

whether a statute limiting alien ownership will prohibit holding of legal title only, or whether it will restrict other interests in land. The effect of leaseholds and beneficial title held under a trust should be a major concern.[91]

THE EFFECT OF STATE RESTRICTIONS

A critical flaw in state laws which attempt to control alien ownership of land is that they are mechanically ineffective, and therefore little more than nuisances. Due to their lack of uniformity, they pose problems for those who cannot protect themselves, but present few impediments in the way of the serious alien investor.[92] Correcting the major mechanical flaws with which present state statutes regulating alien ownership are afflicted[93] would be only the first step toward an effective statute.

A second major concern is constitutional effectiveness. Both the federal government and the individual states may constitutionally impose statutory restrictions on ownership of domestic property, subject to some limitations.[94] The state restrictions generally affect ownership of real property,[95] are often limited to agricultural property, and vary significantly in scope and effect.[96] The present federal limitations are narrower, and normally affect specific industries.[97]

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91. Only Arizona expressly prohibits leases and subleases; this prohibition extends to corporations not qualified to do business in the state, and not to individuals. ARIZ. REV. STAT. ANN. § 37-240 (1978).

92. *See* notes 60-91 and accompanying text *supra* (flaws in the law grant the large investor an advantage).

The small investor, who probably does not have the means to obtain legal advice, is at a disadvantage. If the individual is a citizen or an alien investor, and lives in a state that restricts inheritance, the person will be unable to devise land to relatives in the old country. *See* notes 74-76 and accompanying text *supra*. Furthermore, the alien resident versus nonresident distinction established by some states puts the small alien investor at another disadvantage. A resident alien landowner who leaves the state and returns to the nation of his citizenship for a substantial period of time may inadvertently have placed his ownership rights in jeopardy. *See* note 59 *supra*.

93. *See* notes 56-92 and accompanying text *supra*.

94. *See* notes 100-03 and accompanying text *infra*.

95. *See* notes 56-59 and accompanying text *supra*.

96. *See* note 58 and accompanying text *supra*.

97. *See* 10 U.S.C.A. § 2272 (West 1975) (regulating foreign investment in the aircraft industry); 10 U.S.C.A. § 7435 (West Supp. 1979) (regulating right of foreign citizens to lease any land in the naval petroleum or other naval reserves); 12 U.S.C.A. §§ 1813(a), (b), (e) 1815 (West Supp. 1979) (regulating foreign investment in United States banks); 16 U.S.C.A. § 797(e) (West 1974) (prohibiting licenses for construction of dams, conduits, and reservoirs to non-citizens and foreign corporations); 30 U.S.C.A. § 181 (West 1971) (restricting leases of mineral lands of the United States to American citizens, and citizens of another country which affords United States citizens similar rights under its law); *id.* § 1015 (geothermal production leases

The purpose of both state and federal enactments is to exclude or restrict alien influence in the local economy.[98] Obviously, both governments are restricted by the Constitution in achieving this purpose.[99] Although either the state or federal government may be capable of drafting an alien land law that is mechanically effective, apparently only a federal law can also be constitutionally effective.

Land law is *principally* state law,[100] which seems practical. However, any attempted state regulation of alien ownership of

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on federal lands may be issued only to citizens of the United States and to domestic corporations); 33 U.S.C.A. §§ 1503(g), 1502(5) (West 1978) (a license to construct, operate, or own a deep water port may only be issued to a United States citizen or an organization whose chief executive officers and a quorum of its board of directors are United States citizens); 40 U.S.C.A. § 782 (West 1969) (prohibits disposition of long-line communications facilities in Alaska in a manner which would place their direct or indirect control in an alien); 42 U.S.C.A. §§ 2133, 2134 (West 1973) (prohibiting issuance of licenses to any alien or corporation controlled, owned, or dominated by an alien to transport, produce, or acquire atomic energy facilities); 46 U.S.C.A. §§ 802, 835, 1151, 1152 (West 1975) (regulating the shipping industry with respect to foreign investment); 47 U.S.C.A. § 17,222 (West Supp. 1979) (regulating the telegraph industry with respect to foreign investment); *id.* § 310 (West Supp. 1979) (prohibiting the issuance of a radio station license to an alien or foreign corporation).

The present federal alien land law relating to private property does not focus on the same matters as state law. The foundation of the federal laws is the control of enemy and hostile alien assets to further the defense and foreign relations interest of the United States. Under the Trading with the Enemy Act, 50 U.S.C.A. APP. §§ 4-9 (West Supp. 1979) property of enemy aliens may be seized and administered by the United States government. Except for the limited exception noted above, no federal legislation has been passed to limit foreign investment in privately-owned American real estate.

Other federal legislation deals with property rights on federal public lands. It consists of a body of law made up of more than 2,600 acts of Congress. *See* Morrison, *Legal Regulation of Alien Land Ownership in the United States*, U.S. DEPT. OF COMMERCE, 8 REPORT TO CONGRESS OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES, M-28 to M-36 app. (1976) for an extensive treatment of federal laws and regulations applying to federal public lands.

98. It is commonly understood that those in a local economy who own the large tracts of land, and pay the majority of the tax, have the power to influence, or even control, the local economy.

99. *See* Hauenstein v. Lynham, 100 U.S. 483, 484 (1880) (provisions of the treaty between the United States and the Swiss confederation were sufficient to override conflicting provisions in a Virginia statute concerning alien inheritance); Chirac v. Chirac, 15 U.S. (2 Wheat.) 259 (1817). A treaty stipulation may protect the land of an alien from forfeiture by escheat under the laws of a state. In *Chirac*, it was held that a treaty with France granted French citizens the right to purchase and hold land in the United States, removed the incapacity of alienage, and placed them in precisely the same situation as if they had been citizens of the United States. The state statute limiting alien rights to control land was thus of no consequence in relation to the treaty, which, under the Constitution, is the supreme law of the land.

100. *See* Hauenstein v. Lynham, 100 U.S. 483, 484 (1880) ("The law of nations recognizes the liberty of every government to give foreigners only such rights, touching immovable property within its territory, as it may see

land within its boundaries is subject to two major limitations: direct constitutional limitations under the equal protection and due process clauses of the fourteenth amendment,[101] and indirect limitations resulting from inherent federal jurisdiction over foreign affairs.[102]

Direct Constitutional Limitations

Aliens have long been held to be "persons" within the meaning of the fourteenth amendment generally, and of the equal protection clause in particular. Thus the threshold criterion for constitutional protection is met by those against whom the alien laws discriminate.[103] This protection "extends to foreign nationals lawfully within the United States."[104] It is when aliens are designated as a class, and the class's rights of land ownership are regulated, that state and federal regulations become subject to judicial scrutiny.

Equal Protection

It is often argued that the equal protection clause prohibits wholesale discrimination against resident aliens, but not against nonresident aliens. A nonresident alien, who is not physically

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fit to concede. . . . In our country, this authority is primarily in the states where the property is situated.")

101. *See* notes 103-37 and accompanying text *infra*.

102. Zschernig v. Miller, 389 U.S. 429, 432 (1968). In *Zschernig*, the Court stated that state laws may be invalidated solely because they constitute "an intrusion by the state into the field of foreign affairs." *Id.* Here, the Court declared invalid an Oregon statute which conditioned a nonresident alien's right to take property by succession on a showing that the claimant's country offered reciprocal rights to United States citizens, and that the claimant would have the right to receive the property without confiscation.

See U.S. CONST. art. I, § 10 (state cannot enter into independent negotiations regarding property, probate, or any other matter); Hines v. Davidowitz, 312 U.S. 52, 63 (1941) (presumption of preemption is much stronger in foreign relations than in most other fields).

103. Yick Wo v. Hopkins, 118 U.S. 356 (1886). The *Yick Wo* Court stated:

> The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. . . . These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences in race, of color, or of nationality; and the equal protection of the laws is the protection of equal laws.

Id. at 369. *Cf.* Graham v. Richardson, 403 U.S. 365, 371 (1971) ("a person [in the fourteenth amendment context] encompasses lawfully-admitted resident aliens, as well as citizens of the United States, and entitles both citizens and aliens to equal protection of the laws of the state in which they reside").

104. Levy v. Louisiana, 391 U.S. 68 (1968); Hines v. Davidowitz, 312 U.S. 52 (1941); Terrace v. Thompson, 263 U.S. 197 (1923); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

within the state's borders, is not "within its jurisdiction."[105] Thus, regulation of investment by nonresident aliens may be characterized as "economic regulation," subject only to the "rational basis" test.[106]

Current equal protection doctrine offers two levels of constitutional protection. If a law employs suspect classifications or affects fundamental rights, the "higher test" applies and the government must show a compelling interest to support the law.[107] All other classifications are judged by a "lower test," which simply requires a rational relationship between the classification and its intended purpose.[108] The "higher test" is more difficult to satisfy than the "lower test." Thus, in considering the validity of a statute regulating foreign ownership and investment in land, the critical question is which standard of review to apply. The Supreme Court has found aliens to be "a prime example of a 'discrete and insular' minority . . . for whom . . . heightened judicial solicitude is appropriate,"[109] and has referred to the "strict scrutiny" standard of review in two major categories of cases concerning aliens.[110]

The first category deals with classifications based on alienage itself, restricting the alien's ability to earn a livelihood in different occupations or to receive economic benefits from the state. The Court has declared unconstitutional a limitation on

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105. De Tenorio v. McGowan, 510 F.2d 92, 101 (5th Cir.), *cert. denied*, 423 U.S. 877(1975); Liebman & Levine, *Foreign Investors and Equal Protection*, 27 MERCER L. REV. 615, 618-19 (1976) [hereinafter cited as Liebman & Levine] (use of term "jurisdiction" may suggest the broader meaning of "subject to its laws," and it might be supposed that the fact of the prohibition against acquiring or holding land is itself an exercise of jurisdiction over the nonresident, nonpresent alien).

106. *See* note 108 and accompanying text *infra*.

107. Hunter v. Erickson, 393 U.S. 385, 391-92 (1969); Loving v. Virginia, 388 U.S. 1, 10 (1967); McLaughlin v. Florida, 379 U.S. 184, 192-94 (1964).

108. *E.g.*, Dandridge v. Williams, 397 U.S. 471, 485 (1970); McGowan v. Maryland, 366 U.S. 420, 425-27 (1961); Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955); Lindsley v. National Carbolic Gas Co., 220 U.S. 61, 78 (1911).

109. *In re* Griffiths, 413 U.S. 717 (1973); Sugarman v. Dougall, 413 U.S. 634 (1973). However, Justice Rehnquist dissented in these two cases:

> [T]here is no language in the [fourteenth] Amendment, or any other historical evidence as to the intent of the framers, which would suggest to the slightest degree that it was intended to render alienage a "suspect" classification, that it was designed in any way to protect "discrete and insular minorities" other than racial minorities . . . .

Id.

Graham v. Richardson, 403 U.S. 365, 372 (state laws which denied welfare benefits to resident aliens and to aliens who had not resided in the United States for a specified number of years were unconstitutional because they deprived these persons of equal protection).

110. *E.g.*, L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 16-6 (1978).

the proportion of aliens in an employer's work force;[111] exclusion of aliens from the practice of law;[112] denial to aliens of the right to be licensed to practice civil engineering;[113] denial of welfare benefits to aliens;[114] denial to nondeclarant aliens of state financial aid for higher education;[115] and denial to aliens of real estate licenses.[116] It is thus generally held that discrimination against aliens as a class is sustainable only if it is necessary to the accomplishment of a permissible state purpose or protection of a substantial state interest.[117]

The second line of cases deals with ownership of land by a subclass of aliens—those ineligible for citizenship. In *Terrace v. Thompson*,[118] the Court upheld the constitutionality of a Washington statute prohibiting nondeclarant aliens from owning nonmineral lands except those acquired by inheritance. The basis of the decision was the recognition of a valid legislative purpose for distinguishing between citizens and aliens. For a period after *Terrace*, the Court upheld, over constitutional challenge, California statutes based expressly on ineligibility for citizenship.[119]

In 1948, the tide turned with the decision of *Oyaman v. California*.[120] The Court reversed itself and declared that the California Alien Land Law, which forbade ineligible aliens from

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

112. *In re* Griffiths, 413 U.S. 717 (1973).

113. Examining Bd. v. Flores de Otero, 426 U.S. 572 (1976) ("the governmental interest claimed to justify the discrimination is to be carefully examined in order to determine whether that interest is legitimate and substantial, and inquiry must be made whether the means adopted to achieve the goal are necessary and precisely drawn").

114. Graham v. Richardson, 403 U.S. 365 (1971).

115. Nyquist v. Mauclet, 432 U.S. 1 (1977).

116. Indiana Real Estate Comm'n v. Satoskar, 417 U.S. 938 (1974).

117. *See* note 103 *supra*.

118. 263 U.S. 197 (1923) (under immigration laws then prevailing, Orientals were ineligible for citizenship).

119. Porterfield v. Webb, 263 U.S. 225 (1923). An alien land law forbidding aliens not eligible for citizenship under the laws of the United States to lease land in California was not violative of the equal protection clause of the fourteenth amendment. The classification was held not to be arbitrary or unreasonable although the right to lease land was conferred on other aliens. Webb v. O'Brien, 263 U.S. 313 (1923). In *Webb*, a citizen attempted to enter into a cropping agreement with a Japanese citizen. The Court stated that a citizen had no legal right to enter into a contract with an alien not eligible for citizenship under United States law, unless the alien was permitted by law to make and carry out that contract. *Cf.* Frick v. Webb, 263 U.S. 326 (1923) (because a treaty between the United States and Japan did not extend to subjects of Japan the right to use land within the United States for agricultural purposes, the Court upheld a statute prohibiting ownership by a Japanese subject of stock in a corporation owning farm land).

120. 332 U.S. 633 (1948).

owning or transferring land, was unconstitutional because it denied aliens equal protection of the law.[121] A Washington law which prevented ineligible aliens from obtaining commercial fishing licenses was invalidated in *Takahashi v. Fish & Game Commission*.[122] The state claimed a special interest in preserving natural resources for its citizens. The Court rejected this argument by characterizing commercial fishing as "earning a living," a fundamental right protected by strict scrutiny.[123]

The constitutional safeguards and protections previously discussed have generally been afforded only to resident aliens and not to nonresident aliens,[124] for several reasons. Nonresident aliens as a class constitute ninety percent of the world's population, so they can hardly be labeled "a 'discrete and insular' minority . . . for whom . . . heightened judicial solicitude is appropriate."[125] Furthermore, only the investment of a nonresident is at stake, not his means of earning a living.[126] Finally, the nonresident is a greater "threat" to the community, for his interest in the local community is limited, and he is much more likely than the resident alien to have conflicting diplomatic support from his own government.[127] Since the Court has given no precise statement on the extent of constitutional protection afforded nonresident aliens, review of such classifications would seem to require even less than the rational basis needed to uphold nonsuspect classifications under the fourteenth amendment. As a result, state legislation regulating the property rights of nonresident aliens would be more likely to withstand a constitutional challenge than legislation dealing with the rights of resident aliens.[128] There is clearly a relationship between the classification excluding aliens and its ostensible immediate purpose, exclusion of alien influence from the state. States may also be better able to restrict the property rights of nonresident than of resident aliens in the exercise of their police powers.[129]

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121. At this time, only Japanese were ineligible for citizenship under federal law. As a result, escheat held in the defendant son's name would be based solely on his father's nationality. The Court saw this as impermissible racial discrimination against a citizen. Four of the Justices comprising the majority would have held the statutory classification race-based and therefore unconstitutional on its face. Oyama v. California, 332 U.S. at 650 (Murphy, J., concurring).

122. 334 U.S. 410 (1948).

123. *Id.*

124. *See* note 103 and accompanying text *supra.*

125. *See* note 109 and accompanying text *supra.*

126. *See* notes 111-16 and accompanying text *supra.*

127. *See* notes 39-50 and accompanying text *supra.*

128. *See, e.g.*, Fiallo v. Bell, 430 U.S. 787 (1977); Shaughnessy v. United States *ex rel.* Mezel, 345 U.S. 206 (1953); Johnson v. Eisentrager, 339 U.S. 763 (1949). *See also* Matthews v. Diaz, 426 U.S. 67, 77-78 (1977).

129. *See* note 128 and accompanying text *supra.*

The state is severely restricted by the requirement of equal protection in attempting to regulate alien land ownership. The federal government, on the other hand, is subject to fewer direct restrictions. The federal government's ability to legislate is limited to the powers enumerated in article one of the United States Constitution.[130] Except with respect to land in the District of Columbia,[131] there is no express federal power to regulate the purchase, sale, or ownership of property. However, the federal government is far from powerless. It has a significant basis for such legislation in its supremacy over national matters.[132]

Equal protection doctrine, at least in an attenuated form, also applies against the federal government.[133] As a result, the courts have held discrimination against aliens in federal civil service regulations[134] and in disaster loan programs unconstitutional.[135] However, the major federal regulations restricting property ownership by aliens are much more readily defended against equal protection attack than are state laws, whether applied to residents or to nonresidents. Where state laws have wholesale proscriptions against all aliens, the federal government singles out citizens of certain nations for restrictive treatment.[136] States create restrictions to protect local economy and security; the federal government does so to protect the United States from hostile activities within its borders, and to protect the interests of individual aliens from potentially more serious state actions.[137]

The strongest impact of the equal protection clause is that it forbids wholesale discrimination against resident aliens by either the state or the federal government. The restriction of federal discrimination against nonresident aliens is not so strong. The nonresident alien will not be protected by the strict scrutiny

130. U.S. CONST. art. 1.

131. U.S. CONST. art. I., § 8, cl. 18.

132. *See* notes 142-44 and accompanying text *infra*.

133. *See* Shapiro v. Thompson, 394 U.S. 618 (1969); Bolling v. Sharpe, 347 U.S. 497 (1954).

134. Mow Sun Wong v. Hampton, 500 F.2d 1031 (9th Cir.), *aff'd*, 426 U.S. 88 (1976).

135. Ramos v. United States Civil Serv. Comm'n, 376 F. Supp. 361 (D.P.R. 1974).

136. The government is capable of such discretion under its various constitutional powers. *See* notes 142-44 *infra* (greatest source is the treaty power).

137. *See* notes 142-44 *infra* (because of federal supremacy, any restrictive state law must give way to a more permissive federal law).

test (unless his interest is coupled with a fundamental right), and it will be more difficult for him to convince the court that the restrictions imposed are not *rationally* related to the purpose of excluding foreign influence.

Due Process

While equal protection checks the legitimacy of the classification imposed, due process inquires into the legitimacy of the purpose for the classification. To satisfy current substantive due process requirements, the state need only show a rational relationship between the *purpose* of the law and a legitimate state interest.[138] The due process clause is not an effective limitation on state legislation, but it does compel a clear articulation of the purpose of the laws, and thus makes possible a proper constitutional examination of them under the applicable tests.

In effect, the standard due process test is the same as that for nonsuspect classifications under the equal protection clause. Thus, it only protects against arbitrary and capricious laws.[139] Any argument against a state regulation is therefore more likely to be based on the equal protection clause than on the less strict due process clause.

There is no apparent basis in the due process clause for invalidating a law prohibiting nonresident aliens from owning land. However, due process does allow several essential protections against alien ownership. The due process clause of the fourteenth amendment incorporates the fifth amendment obligation to provide compensation for the taking of property for public use.[140] Thus, if a state's alien land laws deprive aliens of their property rights, it can be argued that the state is obligated to compensate them.[141]

Indirect Constitutional Limitations

In addition to the direct constitutional limitations on state legislation concerning alien ownership of land, the supremacy clause of article VI of the United States Constitution allows indirect limitations by the federal government. State laws regulating alien land ownership may thus be subject to severe

138. North Dakota State Bd. of Pharmacy v. Snyder's Drugs, 414 U.S. 156, 164-67 (1973); *see* Ferguson v. Skrupa, 372 U.S. 726, 731-32 (1963).

139. *See* note 108 and accompanying text *supra*.

140. Chicago B. & Q. R.R. v. Chicago, 166 U.S. 226 (1897).

141. *See* Shames v. Nebraska, 323 F. Supp. 1321, 1341 (1971) (Van Pelt, J., dissenting) (state may provide compensation in the case of escheat or provide a period of time within which the alien may dispose of the land on the real estate market). *See also* Asbury Hosp. v. Cass County, 326 U.S. 207 (1945) (due process only requires an *opportunity* to realize market value).

restraints. First, federal legislation preempts conflicting state legislation.[142] Second, treaties, because they are the "supreme law of the land,"[143] override inconsistent state legislation.[144] Third, the federal government has exclusive power over foreign affairs.[145] It is very difficult for a state to draft a statute which can stand in spite of these sources of federal supremacy.

Preemption

Preemptive federal legislation is supported by the federal power over naturalization,[146] the power to regulate interstate and foreign commerce,[147] and the power to provide for the national defense.[148] Congress has exclusive power to provide requirements for naturalization and citizenship,[149] and for the admission or deportation of aliens.[150] This federal power was the basis for invalidating state restrictions on resident aliens in *Takahashi v. Fish and Game Commission*[151] and *Graham v. Richardson*.[152] The state limitations affected the alien's ability to earn a living, and this interfered with the permission granted by the federal government allowing him to establish permanent

142. Pennsylvania v. Nelson, 350 U.S. 497 (1956) (Court struck down a state section law preempted by the federal Smith Act); Hines v. Davidowitz, 312 U.S. 52 (1941) (state alien registration law invalid in face of federal provision).

143. U.S. CONST. art. VI, § 2.

144. Hauenstein v. Lynham, 100 U.S. 483 (1880).

145. *See* Chae Chan Ping v. United States, 130 U.S. 581, 606 (1889) ("For purposes of foreign affairs, the United States is, in the eyes of the Constitution, a single nation, without separate states.")

146. U.S. CONST. art. I, § 8, cl. 4.

147. *Id.* cl. 3.

148. *Id.* cl. 12.

149. Henderson v. Mayor of New York, 92 U.S. 259 (1876) (states cannot use "immigration controls" to exclude aliens whom the federal government chooses to admit).

150. *See* Chae Chan Ping v. United States, 130 U.S. 581 (1889). The Court stated:

> That the government of the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens, it would be to that extent subject to the control of another power. . . . The United States, in their relation to foreign countries and their subjects or citizens, are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the maintenance of its absolute independence and security throughout its entire territory.

Id. at 603-04.

151. 334 U.S. 410 (1948).

152. 403 U.S. 365 (1971).

residence in the United States.[153] Land laws would also in effect limit these fundamentally established rights.

Thus, federal immigration laws coupled with the supremacy clause[154] may protect the rights of resident aliens against state restrictions.[155] On the other hand, Congress possesses the power to regulate the conduct of alien residents, and the terms of their admission and residency.[156] The federal government could therefore condition entrance and residence of an alien upon nonacquisition of any interest in domestic property.

There is no federal law which comprehensively regulates foreign investment by nonresidents,[157] so state limitations on nonresident aliens do not appear to invade the immigration and naturalization field directly. Thus, the federal preemptive power would have little effect on a state's regulation of nonresident investments.

The Constitution also grants Congress exclusive power to "regulate commerce with foreign nations, and among the several states."[158] Under the commerce clause, Congress has been held to have the power to restrict the importation of undesired items,[159] impose tariffs on goods,[160] and regulate specific industries.[161] These precedents would appear to establish Congress's power to restrict the use of instrumentalities of interstate or foreign commerce to transact the sale or exchange of property to a foreign person or his representative.[162] Although the powers to regulate interstate commerce and to regulate foreign commerce

153. The Court's decision in DeCanos v. Bica, 424 U.S. 351 (1976), which sustained a California law prohibiting employment of illegal aliens, is not a relaxation of this rule. The Court strongly emphasized the fact that the law's purpose was simply to enlist state authorities in the implementation of a federal policy.

154. U.S. CONST. art. VI, § 2.

155. *See* Graham v. Richardson, 403 U.S. 365, 376-80 (1971).

156. *See* Fiallo v. Bell, 430 U.S. 787 (1977); Kleindeinst v. Mardel, 408 U.S. 753 (1972); Oceanic Navigation Co. v. Stranahan, 214 U.S. 320 (1909).

Resident aliens have been entitled to legal privileges equal in most respects to those of citizens. *E.g., In re* Griffiths, 413 U.S. 717 (admission to the bar); Sugarman v. Dougal, 413 U.S. 634 (right to public employment); Graham v. Richardson, 403 U.S. 365 (right to welfare benefits); Truax v. Raich, 239 U.S. 33 (right to enjoy private employment).

157. *See* note 97 and accompanying text *supra*.

158. U.S. CONST. art. I, § 8, cl. 3.

159. Weber v. Freed, 239 U.S. 325 (1915); The Abbey Dodge, 223 U.S. 166 (1912); Butterfield v. Stranahan, 192 U.S. 470 (1904).

160. Board of Trustees v. United States, 289 U.S. 48 (1933); Groves v. Slaughter, 40 U.S. (15 Pet.) 449 (1841).

161. Katzenbach v. McClung, 379 U.S. 294 (1964); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).

162. North Am. Co. v. Securities Exchange Comm'n, 327 U.S. 686 (1946); Electric Bond Co. v. Securities Exchange Comm'n, 303 U.S. 419 (1938).

are generally considered to be equal,[163] foreign commerce is seen as requiring greater protection,[164] including greater protection from state interference.

Finally, Congress has the exclusive power "to raise and support armies. . . ."[165] In *Ashwander v. Tennessee Valley Authority*,[166] the United States Supreme Court held that this power permits Congress to make such peacetime provisions as it deems necessary for national defense. One such peacetime provision would appear to be the regulation of foreign ownership of United States land. It is possible that federal regulation or prohibition of such ownership could be construed to be constitutional.

Treaties

One of the strongest federal powers is the power to make treaties. Valid treaties supersede state law, even in areas that the federal government has previously left to the states.[167] Therefore, treaties between the United States and other nations are positive federal law. Conflict with treaty rights is consequently among the most common defenses to the enforcement of alien land laws. State statutes denying nationals of other countries specific rights granted them under international treaties would be invalid.[168]

Few federal treaties directly grant or deny foreign nationals the right to own property in the United States.[169] However, the United States has signed approximately 130 "Treaties of Friendship."[170] Such treaties contain "most favored nations" clauses which provide citizens of the beneficiary countries the same treatment under the laws of the United States as is given to na-

163. United States v. Carolene Prods. Co., 303 U.S. 144 (1938); Pittsburgh & S. Coal Co. v. Bates, 156 U.S. 577 (1895).

164. *See, e.g.*, Brown v. Maryland, 25 U.S. (12 Wheat.) 419 (1827).

165. U.S. CONST. art. I, § 8, cl. 12.

166. 297 U.S. 288 (1936) (Court upheld legislation providing for construction of a dam and electricity generating plant, finding that such energy supplies were an important national defense factor).

167. *See* Missouri v. Holland, 252 U.S. 416 (1920).

168. *See* Kolourat v. Oregon, 336 U.S. 187 (1961); Neilson v. Johnson, 279 U.S. 47 (1929); Sullivan v. Kidd, 254 U.S. 433 (1921); Geofroy v. Riggs, 133 U.S. 258 (1890); Hauenstein v. Lynham, 100 U.S. 483 (1880).

169. One of the exceptions is a treaty with France which requires the nationals of both countries to apply for and receive prior governmental approval before purchasing real property in the other country. *See Protocal to Convention of Establishment, United States—France*, Nov. 25, 1959, ¶ 14 (1960), 11 U.S.T. 2398, 2423, T.I.A.S. No. 4625.

170. For several examples of such treaties and their provisions regarding property ownership of citizens of other nations, *see* Fisch, *State Regulation of Alien Land Ownership*, 43 MO. L. REV. 407 (1978).

tionals of any other nation. Included in these treaties are "nationals clauses," which grant the citizens of a beneficiary country the right to maintain agencies, offices, factories, and other operations in the United States.

Treaties therefore have an effect on both federal and state legislation. Treaties supersede not only inconsistent state laws, but also existing federal law. However, the converse is also true: Federal legislation restricting alien ownership of land overrides preexisting treaties and renders them ineffectual. Thus, subsequent state legislation that grants fewer rights to citizens of countries entitled to most favored nations status than it grants to citizens of other countries could be held invalid under the "Treaties of Friendship." Only new federal legislation will have an effect here.

Foreign Relations

No state may conduct an independent foreign policy,[171] for all international affairs must be carried on by the federal government.[172] Does state regulation of the rights of aliens to hold real estate constitute an impermissible exercise of power? The answer varies depending upon the perspective from which one looks at the laws. As definitions of property rights, state statutes are simply a local concern, focusing on land and the legal relationships surrounding it. Many statutes have been so justified.[173] If, however, such statutes are viewed as measures affecting aliens, they become an international concern, for they focus not only on the land but also on relationships that extend beyond national boundaries.

It was only recently that the United States Supreme Court first enunciated the principle that state laws *may* be invalidated solely because they constitute "an intrusion by the state into the field of foreign affairs."[174] Intrusion commences when state laws

171. Zschernig v. Miller, 389 U.S. 429, 432 (1968). *See* L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 239 (1972) (views *Zschernig* as presenting a new Constitutional doctrine).

172. *See* notes 174-76 and accompanying text *infra*.

173. *See* Terrace v. Thompson, 263 U.S. 147, 217-18 (1923); Blythe v. Hinkley, 180 U.S. 333, 341-42 (1901).

174. Zschernig v. Miller, 389 U.S. 429, 432 (1968). The Court declared invalid an Oregon statute which conditioned a nonresident alien's right to take property by succession on a showing that the claimant's country afforded reciprocal rights to United States citizens, and that the claimant would have the right to receive the property without threat of confiscation. The Court did not disturb its holding in Clark v. Allen, 331 U.S. 503 (1947), that a general reciprocity statute is not per se invalid. But it did find that the actual judicial administration of statutes such as Oregon's involved

> inquiries into the types of governments that obtain in particular foreign nations—whether aliens under their laws have enforceable rights,

become too diplomatically sensitive.[175] Thus, the question faced by state legislators is when restriction of alien ownership of land becomes too "diplomatically sensitive" to be valid. It can now be argued that any state law which discriminates against aliens, especially aliens who are not residents of the United States, constitutes an impermissible intrusion into foreign affairs.[176] However, the Supreme Court has not directly so held, although it has made clear that a law which directly discriminates against particular nations, and thus impinges on our relations with these nations, must be presumed invalid. A reverse type of provision *favoring* another nation would also seem to be invalid.

THE NONDISCLOSURE PROBLEM: THE BASIS OF INEFFECTIVENESS

In addition to problems with the mechanical and constitutional effectiveness of alien statutes, a major concern is the ability of the state or federal government to discover alien ownership. Whatever policy action is taken must be based on

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whether the so-called "rights" are merely dispensations turning upon the whim or caprice of government officials, whether the representation of consuls, ambassadors, and other representatives of foreign nations is credible or made in good faith, whether there is the actual administration in the particular foreign system of law any element of confiscation.

389 U.S. at 434. By contrast, in *Clark v. Allen*, the state "seemed to involve no more than a routine reading of foreign laws. *Id.* at 433. A more extensive inquiry into administration, however, involves the field of foreign affairs and is beyond the scope of this paper.

175. Justice Douglas stated in Zschernig v. Miller, 389 U.S. 429:

It seems inescapable that the type of probate law that Oregon enforces affects international relations in a persistent and subtle way. The practice of state courts in withholding remittances to legatees residing in Communist countries or in preventing them from assigning them is notorious. The several states, of course, have traditionally regulated the descent and distribution of estates. *But those regulations must give way if they impair the effective exercise of the Nation's foreign policy.*

Id. at 400 (citing Berman, *Soviet Heirs in American Courts*, 62 COLUM. L. REV. 257 (1962)); Chaitkin, *The Rights of Residents of Russia and Its Satellites to Share in Estates of American Decedents*, 25 S. CAL. L. REV. 297 (1952) (emphasis added).

Decisions using the *Zschernig* principle to invalidate laws include: *In re* Estate of Kraemer, 276 Cal. App. 2d 715, 81 Cal. Rptr. 287 (1969) (California statute that had been sustained in *Clark v. Allen* was declared invalid); Demcznk Estate, 444 Pa. 212, 282 A.2d 700 (1971) (statute was invalidated "on its face" without inquiry into application).

The majority of post-*Zschernig* decisions have held state statutes valid where no "animadversions" are required. *E.g.*, Bjarsch v. DiFalco, 314 F. Supp. 127 (S.D.N.Y. 1970); *In re* Estate of Kish, 52 N.J. 454, 246 A.2d 1 (1968). *See* Comment, *The Demise of the "Iron Curtain" Statute*, 18 VILL. L. REV. 49 (1972).

176. *See* Note, *Alien Inheritance Statutes: An Examination of the Constitutionality of State Laws Restricting the Rights of Nonresident Aliens to Inherit from American Decedents*, 25 SYRACUSE L. REV. 597, 621-22 (1974).

adequate information concerning the extent and nature of alien investment.

The recording of land transactions is traditionally a state and local responsibility,[177] which causes several problems. First, land purchasing is typically diverse, and is usually a much smaller investment than the takeover of an industrial company.[178] Therefore, the land transaction does not get the attention of the press, and is not ordinarily publicly scrutinized. Furthermore, land records, which are kept at county levels, contain no particular identification of owners.[179]

A second problem is that because of disorganization in state information-gathering, few states have accurate information about the amount of land held by resident and nonresident aliens, increases in the rate of purchases, resultant price increases, and the nature of actual transactions.[180] There is an obvious need for a coordinated fact-finding program to obtain such information accurately, which would provide strong laws for effective control of alien ownership of land. The federal government is most capable of coordinating such a program.

Congress has begun to respond to this need. Several acts have authorized federal studies of foreign investment in the United States. The first such statute was the Foreign Investment Study Act of 1974.[181] The results of the study it authorized demonstrated the need for continuous collection of information on foreign investment in the United States.[182] The International

177. *See* note 100 and accompanying text *supra*.

178. Many federal laws and regulations of specific industries require disclosure. *See* note 97 *supra*. However, up until The International Investment Survey Act of 1976, 22 U.S.C. § 3103(d) (1976), there was no such disclosure requirement on investment in American real estate.

179. Foreign purchasers often go to great lengths to conceal their identities. In one instance, a West German investor contacted a Canadian realty firm, which contacted a Wyoming broker, who contacted a Chicago bank, which hired a Kansas broker, who in turn found a local bank to handle the purchase of a 2,500-acre Kansas farm. *See* Rubin, *The Selling of California*, CAL. B.J. 404, 410 (Dec. 1978).

Another problem in identifying alien owners develops at the county level. The land may obviously be held by an individual with a foreign name, but that individual may be a citizen, a resident alien, or a nonresident alien. *Id.*

180. *See* note 71 *supra*. *See also Alien Ownership of South Dakota Farmland: A Menance to the Family Farm?* 23 S.D. L. REV. 735, 737-44 (1978) (analysis of state statistics on alien ownership of real estate).

181. Pub. L. No. 93-479, 88 Stat. 1450 (1974); 15 U.S.C.A. § 786 (West Supp. 1978).

182. For the nation as a whole the study has not found a strong factual basis for concern about foreign ownership of agricultural land and other real estate. However, the inadequacy of data in this field, together with the use of indirect means of obtaining ownership and techniques to avoid ownership disclosure, result in much uncertainty as to

Investment Survey Act of 1976 was enacted to provide a method for collection of that information.[183]

The Survey Act makes it the duty of the Economics, Statistics and Cooperative Services (ESCS) to produce a method of disclosure.[184] Enforcement of disclosure may be accomplished by means of civil and criminal penalties.[185] This study will also examine such problems as the means by which ownership identity can be hidden; the usefulness of public title and records in providing data; the adequacy, timeliness, and accuracy of various public and private sources of information; and comparable methods of reporting in other countries.[186]

The latest federal development in this area is the Agricultural Foreign Investment Disclosure Act of 1978.[187] This act requires any "foreign person" who acquires, transfers, or holds "any interest" (other than a security interest) in agricultural land to report the transaction to the Secretary of Agriculture.[188]

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the amount and nature of land owned by aliens, except for a few local areas for which special investigations have been undertaken that are summarized in the Commerce Report. There is a need for further investigation.

Foreign Investment Study Act of 1974: Hearing before the Subcomm. on Foreign Commerce and Tourism of the Senate Comm. on Commerce, 94th Cong., 2d Sess. (1976).

183. Pub. L. No. 94-472, 90 Stat. 2059 (1976); 22 U.S.C.A. §§ 3101-3108 (West Supp. 1978).

184. I.S.C.S. is an agency within the Department of Agriculture. *See* 43 Fed. Reg. 53,783 (1978) (details about the implementation of the study). Various local, state, and federal agencies will be contacted, as well as buyers and sellers of real estate, officials of financial institutions, brokers, attorneys, and others who participate in the real estate market. *Id.*

185. Under the Act, failure to furnish required information may subject the violator to a civil penalty not exceeding $10,000 or a criminal penalty of a fine not to exceed $10,000 or imprisonment of no more than one year, or both. 22 U.S.C.A. § 3105 (West Supp. 1979).

186. *See id.* §§ 1301-1308 (West Supp. 1978). Further information about the study may be obtained from the National Resource Economics Division, Economics, Statistics and Cooperatives Service, U.S. Dept. of Agriculture, Washington, D.C. 20250, (202) 447-9179.

187. Pub. L. No. 95-460, 92 Stat. 1263 (1978).

188. *Id.* The Act defines "foreign person" in a broad sense to include:

(A) any individual—
  (i) who is not a citizen or national of the United States;
  (ii) who is not a citizen of the Northern Mariana Islands or the Trust Territory of the Pacific Islands; or
  (iii) who is not lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act;

(B) any person, other than an individual or a government, which is created or organized under the laws of a foreign government or which has its principal place of business located outside all of the states;

(C) any person, other than an individual or government—

In contrast to the Survey Act, only civil penalties are provided for noncompliance with the Act's provisions.[189] The Act also imposes upon the Secretary of Agriculture the duty to make continuous reports[190] on the effects of alien investment upon family farms and rural communities.[191]

It is obvious that Congress is just beginning to respond to the need for a coordinated fact-finding program. Congress has not yet started to study the information on foreign ownership of land in the United States—it is simply studying the methods of obtaining such information. At present there is no one comprehensive source of information on land ownership.[192] Therefore,

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(i) which is created or organized under the laws of any state; and
(ii) in which, as determined by the Secretary under regulations which the Secretary shall prescribe, a significant interest or substantial control is directly or indirectly held
(I) by one individual referred to in subparagraph (A);
(II) by any person referred to in subparagraph (B);
(III) by any foreign government; or
(IV) by any combination of such individuals, persons, or government; and
(D) any foreign government; . . .
(i) the term "person" includes any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity.

92 Stat. at 1266. The phrase "any interest" includes all interest in agricultural land, including leaseholds of ten years or more, and noncontingent future interests which will become possessory upon termination of the present possessory estate. 7 C.F.R. § 781.2(c) (1979).

189. Where the Secretary determines that a person (1) has failed to submit a report, or (2) has knowingly substituted a report which does not contain all of the required information or which contains false or misleading information, the amount of the penalty is to be determined by the Secretary as the sum necessary to carry out the purpose of the Act, up to a maximum of 25 percent of the fair market value of the property on the date of assessment of the penalty. 92 Stat. at 1265.

190. Six months after the effective date of the reporting requirements, a report will be made by the Secretary of Agriculture. 92 Stat. at 1263. Similar reports will be made after 12 months. *Id.*

Cf. 7 C.F.R. § 781 (1979) (reports with respect to holdings as of February 1, 1979 must be submitted on or before Aug. 6, 1979). *See also* 7 C.F.R. § 7813(c) (1979) (after Feb. 1, 1979, if a foreign person acquires or transfers an interest in agricultural land, a report must be filed within 90 days after date of acquisition or transfer).

191. 92 Stat. at 1263.

192. In a recent hearing before the Subcommittee on Census and Population Concerning Data on Foreign Ownership of Property within the United States, great concern was expressed about the ability to obtain reliable information. Those presenting the report concerning alien ownership of land were baffled by the small amount of information available. They had to rely on journals (local and national), periodicals, and local public records. There was *no* one reliable source. *See Data on Foreign Ownership*, *supra* note 62, at 11. *See also* note 203 *infra* (Governors Association's recommendation of a uniform reporting law).

millions of dollars worth of land can be purchased by aliens—resident or nonresident—without detection. Moreover, absent comprehensive disclosure of alien investments, there is no ground on which to build a coordinated policy to deal with these investments.[193]

CAVEAT ON FUTURE LEGISLATION

The previous discussion points out the ineffective attempts by the states to control alien investment in land. A state which desires to control alien ownership of its land must satisfy two major objectives—mechanical and constitutional effectiveness.

Mechanical effectiveness can only be achieved by defining who is an alien and what ownership of land means, and by providing a means of disclosure. It is suggested that legislation should follow the definition of "foreign persons" used in the Agricultural Foreign Investment Disclosure Act of 1978.[194] This broad and comprehensive definition will allow discretion in scrutinizing any multi-level legal structure which may be set up to protect the identity of a foreign investor.[195]

Furthermore, prohibitions on the type of ownership of land will have to be extended to holding title,[196] leasehold interests,[197] corporate property,[198] and trust agreements.[199] Acquisition of land through inheritance must also comply with the ownership restrictions.[200] Strict enforcement of these prohibitions will severely curtail the ability of the alien investor to avoid state-imposed restrictions.

No restrictions will be enforceable without stringent uniform disclosure requirements to reveal noncompliance. Therefore, the state must not only require disclosure, as the federal government has done,[201] but must also make a coordinated effort to bring essential information to the otherwise uninformed legislature.[202] This information will enable the legislature to establish a policy in regard to amount, time, and type of holding.[203]

193. *See* note 203 *supra*.

194. Pub. L. No. 95-460, 92 Stat. 1263 (1978). *See* note 188 *supra* (definition of "foreign person").

195. Such discretion should be utilized to avoid inequities resulting from the resident-nonresident distinction. *See* note 92 *supra*.

196. *See* notes 56, 58, & 59 and accompanying text *supra*.

197. *See* note 91 *supra*.

198. *See* notes 62-72 and accompanying text *supra*.

199. *See* notes 77-91 and accompanying text *supra*.

200. *See* notes 74-76 and accompanying text *supra*.

201. *See* notes 177-93 and accompanying text *supra*.

202. *See* notes 192 and accompanying text *supra*. *See also* note 203 *infra*.

203. Whatever policy develops regarding restriction of foreign invest-

Constitutional effectiveness can only be accomplished if the state statute avoids conflict with due process[204] and equal protection[205] requirements, and with powers granted to Congress by the Constitution.[206] Conflict with these constitutional standards can only be avoided if the state correctly justifies the statute's "purpose." If the purpose reflects discrimination against aliens as a class, with no compelling state interest to justify it,[207] the statute will not survive. On the other hand, if the purpose is purely economic—conservation, maintenance, and fair and efficient distribution of land—the courts may simply apply the rational basis of review.[208] The whole statute must demonstrate that its purpose is constitutionally permissible and that the use of the "alien" classification is necessary to accomplish its purpose of safeguarding the state's economic interests. However, the indirect constitutional provisions are so broad that any state statute, no matter how well written, stands a chance of being invalidated.[209]

The most obvious answer to the problem is federal legislation, which would provide uniformity and preempt conflicting state law. It is the federal government that has the power to coordinate efforts to obtain adequate information,[210] and with this information to legislate effectively. The federal government has several powers on which to base such legislation,[211] and a greater ability to avoid conflict with the Constitution. Indeed, only the federal government can take a comprehensive approach to alien investment and master the difficulties inherent in dealing with foreign powers.

Despite the power of Congress to act, it has done so neither comprehensively nor effectively. There is no guarantee that fed-

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ment in United States land, be it to prevent destruction of the family farm, or to halt economic power, by way of land holdings, from falling under foreign control, it must be based on adequate data which are unavailable at present. *See* Policy Position, 1978-79 National Governors Association (1978).

The Governors Association believes the problem of obtaining adequate information can only be solved through a coordinated effort. Thus far, the federal government has not implemented a program to address it. *Id. See* notes 181-92 and accompanying text *supra* (federal government's program to obtain adequate information). *See also* note 71 *supra* (states that have attempted to deal with the lack of information problem on their own).

204. *See* notes 138-41 and accompanying text *supra.*
205. *See* notes 103-37 and accompanying text *supra.*
206. *See* notes 142-76 and accompanying text *supra.*
207. *See* note 107 and accompanying text *supra.*
208. *See* note 108 and accompanying text *supra.*
209. *See* notes 142-76 *supra.*
210. *Id.*
211. *Id.*

eral legislation is imminent, or that if it is enacted it will conclusively deal with the problem of alien land ownership. The purpose of this paper is to warn the states that their own legislation—no matter how constructed—is doomed to ineffectiveness. The responsibility for effective alien land ownership legislation belongs to Congress. Absent effective and comprehensive legislation, the present state of the law is sending a clear message to the alien investor that our land is his land.

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