ALIEN LAND LAWS AND ALIEN RIGHTS

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ALIEN LAND LAWS AND ALIEN RIGHTS

PAPER PRESENTED BY

CHARLES F. CURRY

MEMBER OF CONGRESS
THIRD CALIFORNIA DISTRICT

ON

ANTIALIEN LAND LAWS OF THE SEVERAL STATES AND TERRITORIES AND OF THE UNITED STATES, OF JAPAN AND OTHER COUNTRIES; A DISCUSSION OF THEIR LEGALITY AND PROPRIETY, AND A SUMMARY AND DISCUSSION OF THE RIGHTS OF ALIENS

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ALIEN LAND LAWS AND ALIEN RIGHTS

By CHARLES F. CURRY, Member of Congress.

INTRODUCTION.

There is no question so much discussed and so little understood as the so-called Japanese question, sometimes referred to as the California question.

At a conference of United States Senators and Representatives in Congress from the 11 Western States and from a number of other States, held in the caucus room of the House of Representatives, Washington, D. C., April 20, 1921, a permanent organization was effected whose purpose it shall be to present the viewpoint of the people of the West to the people of the several States of the Union on oriental immigration and land ownership. Hon. Hiram W. Johnson, United States Senator from California, was elected chairman, and the following executive committee was appointed:

States.	United States Senators.	Members of the House of Representatives.
Arizona	Henry F. Ashurst	Carl Hayden.
Colorado	Lawrence C. Phipps	C. B. Timberlake.
Idaho	William E. Borah	Addison T. Smith.
Montana	Thomas J. Walsh	Washington J. McCormick.
Nebraska	George W. Norris	Moses P. Kinkaid.
Nevada	Key Pittman	Samuel S. Arentz.
New Mexico	A. A. Jones	Nestor Montoya.
Oklahoma	J. W. Harreld	James V. McClintic.
Oregon	Charles L. McNary	N. J. Sinnott.
Texas	Morris Sheppard	John M. Garner.
Utah	William H. King	E. O. Leatherwood.
Washington	Miles Poindexter	John F. Miller.

The California delegation will be a committee of the whole, acting as a unit of the executive committee.

There is no occasion for hysteria, no cause for alarm. We purpose no unusual course of procedure; we purpose the violation of no treaty, the infringement of the rights of the people of no nation. We pl n no action contrary to the law of nations or the Constitution of the United States.

The land of a country should belong to the nation and to its citizens. In many States aliens ineligible to citizenship are not permitted to own or lease agricultural or mineral lands. In so legislating the

several States, including California, were within their constitutional rights.

Japanese are ineligible to citizenship, and for this and other reason that I will present further on we insist that by treaty, or by statute, or by both, they be prohibited from immigrating into the United States.

We purpose only that America shall insist on the sacred rights of Americans in America; nothing more; nothing less.

There is a singular solidarity of purpose in the West. The sons and daughters of the hardy pioneers who conquered the wilderness and builded an empire on the western frontier of the American Continent mean to keep that empire American.

It took our branch of the human race thousands of years to develop to the government-by-the-people stage of civilization. It was a long, hard climb from barbarism to American civilization. It would be but a short step backward from the highest civilization to semibarbarism.

While the desire for liberty is as old as the aspirations of the human heart for higher and better conditions, the liberty we enjoy is a new thing in government and dates practically from the Revolutionary War. It cost unnumbered precious lives and untold treasure. It is our obligation to transmit it to posterity as pure as we received it from the founders and preservers of the Republic, who suffered so much and who mutually pledged their lives, their fortunes, and their sacred honor in order that they and we might be free. The people of a Republic can only maintain their liberty as long as the people are homogeneous, speak the same language, worship the same God, and are intelligent, law-abiding citizens who love liberty and are willing and able to defend it.

The miscegenation of the white with the yellow race always results in the production of a hybrid mongrel mentally, morally, and physically inferior to either race, inheriting the mental, moral, and physical defects of both parents. It does not elevate the yellow race and does deteriorate the white race. The very thought of intermarriage is revolting. It shatters the very keystone of occidental civilization. It is demoralizing in morality and menacing in problems of mongrel racial degeneracy. It brings into being dangers of manifest evil to American homes and institutions. I conceive that we would be unworthy of our heritage if we gave countenance to the prostitution of what we honor as the most sacred contract under the law. And it may be said that the idea of intermarriage is as unacceptable to the thinking Japanese as it is to Americans.

It is the duty of our Government to protect itself and its citizens from foreign invasion and commercial and industrial exploitation, whether they come in the shape of bombarding men-of-war and devastating armies or in the shape of passenger and freight ships carrying cheap labor and cheap goods.

The West is being invaded. The process of invasion has been aptly termed "peaceful penetration." The invasion is by an alien people. They are a people unassimilable by marriage. They are a people who are a race unto themselves, and by virtue of that very fact ever will be a race and a nation unto themselves, it matters not what may be the land of their birth.

Economically we are unable to compete with them and maintain the American standard of living; racially we can not assimilate them.

Hence we must exclude them from our shores as settlers in our midst and prohibit them from owning land. Those already here will be protected in their right to the enjoyment of life, liberty, and legally acquired property.

This is not the conclusion arrived at after hasty consideration and radical thought. It is the determination of hard-headed men and women, sons and daughters of the pioneers who builded the Empire of the West, deliberately arrived at after careful investigation, keen analysis, and thoughtful consultation. It is the only means by which we can keep the West, American in heart, spirit, and in blood as well as in name.

This must be done.

The alternative is that the richest section of the United States will gradually come into the complete control of an alien race. They will outnumber us in population; they will control the pulse of commerce. The traditions, the religion, the hopes, and aspirations of the races differ radically; they can never meet on a common ground.

If the Republic is to survive, there must be an American people; one people, inseparable.

I am presenting herewith in as brief and concise form as possible data that I have gathered covering the more important phases of the question. I am prompted to do this because there has been so much discussion and such gross misrepresentation of the California attitude. A careful study of the subject will convince anyone who will approach it with an open mind that the attitude of California, and other States that have taken like action, is not only justifiable but essential to the national welfare.

LEGALITY AND PROPRIETY OF THE "CALIFORNIA ANTIALIEN LAND ACT."

It has sometimes been contended that the California antialien land law is in violation of the Constitution of the United States and of the treaty with Japan.

The California law specifically states that aliens ineligible to citizenship shall be protected in all rights granted them by treaty.

The right of a State to enact legislation prohibiting the ownership of land by an alien is upheld by Article X of articles in addition to and amendments to the Constitution of the United States. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Further Article XI provides "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any one of the United States by citizens of another State, or by citizens or subjects of any foreign State." (In effect Jan. 8, 1798.)

Hence, since it is patent the several States of the Union have the express authority and power, which right has been frequently exercised by the States, to control the ownership of land by aliens and to prohibit such ownership, no action to test the validity of State act thus limiting the ownership of land may be had in the Federal courts, and any action must be brought before the State courts and the final appeal will rest with the highest court of the State.

Nor can any treaty entered into between the United States and a foreign State nullify the force and effect of State law governing the ownership of land, for it is an axiom of law that "A treaty can not amend the Constitution." It is not within the power of the Federal Government by treaty, any more than by act of Congress, to deprive a sovereign State of its just powers derived from the Constitution.

Under the common law of England an alien can not own land. "An alien-born may purchase lands or other estates, but not for his own use, for the King is thereupon entitled to them." (This rule is repealed in many of the United States.) "Yet an alien may acquire a property in goods, money, and other personal estate, or may hire a house for his habitation, for personal estate is of a transitory and movable nature; and besides, this indulgence to strangers is necessary for the advancement of trade."—Blackstone.

Hence, it is seen that any privileges extended aliens is in consideration of the advantage that will accrue to the State or the citizens of the State, and where no advantage will accrue it is contrary to public policy to extend privilege.

The rights of every country to determine for itself who may and who may not be entitled to citizenship, domicile, residence, and ownership of land, is universally recognized and exercised and has the sanction of international law. An alien may be permitted to own land in one part and denied the right to own land in another part of the nation or empire.

The propriety of the California attitude can not be honestly and sincerely questioned.

We are determined to prevent the colonization of the West by an alien people, unassimilable, with different standards of living and ideals totally foreign to ours.

Surely Japan can not properly protest our refusal to grant to Japanese nationals in America privileges that Japan withholds from American nationals in Japan.

Our attitude toward Japan and the Japanese people is more than friendly, it is cordial. America is responsible in large measure for the remarkable growth and success of Japan in the family of nations. Our intercourse has always been marked by open and helpful mutual friendship. It is to the material benefit of both nations that this continue.

We do not seek the privileges in Japan that are now denied us, notably the privilege of acquiring land. We recognize fully the right of Japan to deal with questions of internal policy precisely as the Government of Japan sees fit. We expect Japan, in dealing with such questions, to be guided firmly by the thought of the welfare of Japanese nationals. We expect Japan, however, to appreciate our equal right to be guided firmly by the thought, first and only, of the welfare of American nationals in America.

Following is an article published in the Japanese Review of International Law, Tokyo, November, 1920, by A. Ninagawa, LL. D., a recognized Japanese authority, defending the propriety and legality of the California law. In the December number of the same publication appeared an article by M. Maita, another great Japanese authority, to the same effect.

There is also appended an article from the Bee, of Sacramento, Calif., March 27, 1920, quoting two articles from the Japanese Review

of International Law, by Sakuye Takahashi, LL. D., the leading editor of that publication, and by Dr. K. Kobayashi, both of which articles fully uphold the California law.

[Translated from Gaiko Jiho (Revue Diplomatique), Nov. 1, 1920.]

ATTITUDE OF CALIFORNIANS TO JAPANESE; HOW TO SOLVE THE QUESTION.

[By A. Ninagawa, LL. D.]

ATTITUDE OF THE CALIFORNIANS IN THE CALIFORNIA LAND LAW.

When we consider the attitude of the Californians from the viewpoint of the land law we have no special reason for criticism. For the Californians have adopted the principle that aliens have the right to own land only within limits set by treaty or by law. There is nothing wrong or illegal in this interpretation. Even aliens eligible to citizenship have the right to ownership in land only within the limits of American law (section 1). They have no absolute right to such ownership. And aliens ineligible to citizenship may own land when such right is provided for by treaty, but not otherwise.

That Japanese, other than those born in the country, are ineligible to citizenship has been known all along. And the present Japan-American treaty (of commerce and navigation) does not provide for the right of operating or possessing land for agricultural use. From the first it has been called a treaty of commerce and navigation. Since its purpose is commerce and navigation this treaty is not an agricultural treaty. Moreover it is certainly a correct interpretation to say that the treaty does not provide for the right of land ownership. The Americans in California probably base their present land law on this interpretation. I regard the California interpretation as correct. It is an extremely unfortunate oversight on the part of the authorities and the entire body of the Japanese people that while they have up to this time for many years been sending large numbers of agricultural emigrants to America, they have not secured definitely by treaty the right of ownership in agricultural land.

It is now impossible for the Japanese people to secure from America the rights in agricultural land which Japan desires, but which has not been guaranteed by treaty. If we wish to secure rights in agricultural land we must do it either by concluding a new treaty or by securing from America eligibility to citizenship. There is no other way. We can say that in the California law itself there is no element of injustice.

[From the Sacramento Bee, Aug. 27, 1920.]

JAPAN REVIEWS OUR LAND LAW—HER AUTHORITIES DECLARE IT VIOLATES NEITHER CONSTITUTION NOR TREATY.

[By V. S. McClatchy.]

Some Japanese, and many pro-Japanese in this country, question the constitutionality of California's proposed initiative alien land law, and insist also that it conflicts with the existing treaty between Japan and the United States.

LEGALITY OF MEASURE QUESTIONED.

Henry P. Bowie, who was formerly a Californian (he was the first president of the Japan Society of San Francisco), now settled in Japan, says in a leading article in the Tokyo Japan Times and Mail of July 5, 1920:

"It is the opinion of many legal minds and jurists of distinction that this California statute violates the letter and the spirit of the treaty with Japan. * * * There are sound reasons for believing that should the case be properly presented either by an appeal to, or by original proceedings taken in, the United States Supreme Court, that tribunal would adjudicate the California land law to be unconstitutional and void."

And again, Mr. Bowie says: "The Constitution of the United States declares all treaties to be the supreme law of the land, any law of a State to the contrary notwithstanding."

It has been pointed out a number of times by the proponents of the California land measure that it does not violate in any way the existing treaty with Japan, nor is it in violation of the Constitution of the United States. The contentions put forth by Mr. Bowie in the article referred to are shown to be ridiculous by Japanese authorities of recognized standing, who concede that the law, as originally passed in 1913, and the

initiative measure now before the people, do not in any way conflict with the treaty or with the Constitution of the United States, and that Japan can have no legal redress in the matter.

TAKAHASHI CONCEDES STATUTE IS LEGAL.

The "Japanese Review of International Law," published at Tokyo, is a recognized authority in that country, its contributors being among the best known and best informed of Japanese statesmen.

In the March, 1919, issue of that review, there appeared an article by Sakuye Takahashi, LL. D., its leading editor, in which he disposes uncompromisingly of the opinion, more or less prevalent among the Japanese, that the California land law can be set aside by appeal to the United States Government or to the courts.

He shows in that article:

1. That the treaty between Japan and the United States contains no "favored-nation" clause applicable to the case.

2. That the treaty fails to concede to Japanese in this country the ownership of land for any purpose, or lease of land except for commercial or residential purposes; and that, therefore, the Japanese can not claim under the treaty the right to the use of agricultural lands, either through ownership or lease.

3. That even if the treaty did permit ownership of land, such provision would be illegal, since it is not within the province of the Federal Government but solely the right of the individual States to regulate within their own borders the ownership and control of land.

KOBAYASHI FINDS NO FLAW IN INITIATIVE.

The argument of Dr. Takahashi, being written over a year ago, dealt only with the law of 1913, and could not take into account the initiative measure now before the people of California; but the same Japanese review, in the issue of June, 1920, published a lengthy article by Dr. K. Kobayashi, under the title of "The Anti-Japanese Land Law in California," which considers very fully all phases, historical and legal, of the law of 1913, and also of the initiative measure now before the people of this State for decision.

Therein, he sets forth as clearly and uncompromisingly as did Takahashi a year before, the futility of attempted opposition by legal methods to the California alien land law. He says: "Neither the present California alien land law nor the proposed hasty and cruel initiative law can be dealt with as legal questions. All that can be done is to soften them by political and diplomatic methods."

He considers the proposed law, first as to its constitutionality, and next as to its compliance with the treaty, very fully, explaining the points in connection with both phases.

CALIFORNIA WITHIN HER STATE RIGHTS.

He shows that under the Federal Constitution the Federal Government is clothed only with certain powers as to matters and conditions within the respective States, and that as to other matters full authority is vested in the States themselves. Among the matters over which the States have entire and absolute control are land, and its acquisition and use; and he concludes: "Hence the California land law does not in any way conflict with the Constitution. California can extend or shorten the leasing period or take away the privilege entirely, and we can do nothing."

He explains fully our treaty with Japan, showing the material differences between this treaty and a similar treaty made by Japan with Great Britain. Our treaty with Japan expressly omits granting to Japanese in this country the privilege of owning any land for any purpose, or of leasing lands for purposes aside from those having to do with commerce and residence. The treaty with Great Britain is quite different.

He shows, too, that the only "favored-nation" clause in our treaty with Japan is found in Article XIV thereof, which applies solely to matters of commerce and navigation, and can not be made, under any stretch of the imagination, to apply to land ownership. In fact, the treaty itself is simply a treaty of commerce and navigation. He states very positively, therefore, "the California land law violates neither the Constitution nor the Japan-American treaty of commerce and navigation."

NATURALIZATION NOT GOVERNED BY TREATY.

He writes in a similar uncompromising way of the suggestion that Japan can secure for her nationals naturalization in the United States by treaty, and says: "To secure naturalization by treaty for aliens ineligible to citizenship under the naturalization law is totally unthinkable," explaining that matters of naturalization are not within the jurisdiction of the executive department of the Federal Government, which