

accountants to practise therein or grants reciprocal rights to Filipinos. . . ."¹³⁴

In the case of *In re Schirer* (1958), the Federal Tribunal of Switzerland dealt with the alien's right to engage in economic activities in Switzerland. The Court said: "An alien who enters the country for the purpose of gainful employment must register with the Aliens Department of the place where he is staying within eight days and in any case before taking up employment. During the time limited for registration, he may be gainfully employed without a permit, provided that he does not obtain regular employment. After that time, any gainful employment requires a permit. Only an alien who has been granted permission to settle in the country may be gainfully employed without police restriction. . . . Every alien who is present in Switzerland without authorization to settle there requires a permit if he enters employment or if, after eight days, he is otherwise gainfully employed. . . . 'gainful employment' is 'entering regular employment or any other activity normally exercised with a view to gain' . . . Article 3, para 1 of the Law concerning Establishment of Aliens does not even require proof that the alien actually received money; it is sufficient to prove activities normally pursued with a view to gain, i.e., exercised, according to common experience, for the sake of gain. . . ."¹³⁵ Moreover, immigration into Switzerland is ordinarily permitted only for one definite type of work, usually as the employee of a named employer. Such employees are needed mainly by Swiss firms having some connections with Switzerland. By the decree of the Swiss Federal Council of November 3, 1944 the book-publishing business in Switzerland has been reserved to Swiss citizens "in order to protect it from excessive foreign influence (UBERFREMDUNG)".¹³⁶

Before the First World War, the English law appears to have treated the aliens resident in Great Britain on a footing of equality with the British subjects. This is no longer the case, as the Aliens Restriction (Amendment) Act of 1919 has introduced certain prohibitions or restrictions on the occupational privileges or freedom of foreign nationals in the United Kingdom. For example, under this Act no alien is permitted to hold a pilotage certificate for any pilotage district in the United Kingdom. He cannot act as master, chief officer or chief engineer of any British merchant ships

¹³⁴ *Sison v. The Board of Accountancy and Ferguson* (1949)—International Law Reports (1951), Case No. 7, 14-16.

¹³⁵ International Law Reports (1953), 303-304.

¹³⁶ Nussbaum: American Swiss Private International Law. (New York) 1960, 15.

registered in the United Kingdom. He is not allowed to act as skipper or second-hand of any British fishing-boat, nor is he permitted to receive an appointment to the Civil Service of the United Kingdom.¹³⁷

The right of States to limit or prohibit the employment of aliens on public works has frequently been upheld by the Courts of the United States. In *Heim v McCall* (1915), the Supreme Court of the United States upheld the validity of Section 14 of the Labour Law of 1909 of the State of New York, which provided: "In the construction of public works by the State or a municipality, or by persons contracting with the State or such municipality, only citizens of the United States shall be employed; and in all cases where labourers are employed on any such public works, preference shall be given to citizens of the State of New York. In each contract for the construction of public works a provision shall be inserted, to the effect that, if the provisions of this section are not complied with, the contract shall be void."¹³⁸ The Supreme Court of Rhode Island held that an ordinance of the city of Providence providing that licenses for the operation of motor buses within the city should be issued only to citizens was not in conflict with the Fourteenth Amendment to the Constitution of the United States of America.¹³⁹ The Supreme Judicial Court of Massachusetts expressed the opinion that a statutory provision limiting the issuance of licenses for hawking and peddling to persons who were citizens or who had declared their intentions to become citizens of the United States was not in conflict with the Fourteenth Amendment to the Constitution of the United States of America.¹⁴⁰

Numerous statutory provisions have been enacted in the various States of the United States excluding aliens from engaging in certain professions, trades, and occupations, such as accountancy, architecture, medicine, engineering, law, optometry, pharmacy, teaching, auctioneering, barbering, taxidermy, peddling, mining, etc. These enactments have generally been defended on the ground that they represent a justifiable and necessary exercise of the police power.¹⁴¹ For instance, the Statutes of Ohio, California and of many other States have barred aliens from the right to hold licenses for the sale of spirituous liquors.¹⁴² California excluded aliens

¹³⁷ Oppenheim: International Law, Vol. I, 689-690.

¹³⁸ 239 U.S. 175, 188, 191, 193 (1915); Hackworth: Digest, Vol. III, 622.

¹³⁹ *Gizzarelli v. Presbrey et al.*, (1922) 44 R.I. 333.

¹⁴⁰ *Commonwealth v. Hana* (1907), 195 Mass. 262; Hackworth: Ibid., 619.

¹⁴¹ Hackworth: Digest, Vol. III, 618.

¹⁴² *Bloomfield v. State* (1912), 86 Ohio 8t. 253, 266; 99 N.E. 309, 312 (1912)—*De Grazier v. Stevens* (1907) 101 Tex. 194, 195; Hackworth: Ibid., 618 footnote

by statute from fishing in her tidal waters and the right to hold licenses for the practice of pharmacy.¹⁴³ In the State of New York, the issuance of a certificate of certified public accountant requires that the applicant therefor be a citizen of the United States or a person who has declared his intention of becoming such citizen.¹⁴⁴ Admission to the legal profession of the several States of the United States or of the territorial possessions thereof is generally conditioned upon among other things the possession by the applicant of American nationality.¹⁴⁵ Similarly, there are statutory prohibitions upon the aliens' participation in certain professions and industries, especially those related to the merchant marine and public communications. For instance, all officers of ships of the United States who "shall have charge of a watch, including pilots" must in all cases be citizens of the United States. However, the President of the United States may "whenever in his discretion the needs of foreign commerce may require" suspend this requirement.¹⁴⁶ Contracts for the construction of aircraft for the military and naval forces of the United States may be awarded only to citizens of the United States and to corporations of which three-fourths or more of the stock is owned by American citizens, and the members of the board of such corporations also must be citizens of the United States.¹⁴⁷ The Civil Aeronautics Act of June 23, 1938 authorized the Civil Aeronautics Authority to issue "airman certificates" specifying "the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft", subject to the proviso "That the Authority may, in its discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments." Under Section 7 of the Civilian Pilot Training Act of June 27, 1939 "no alien shall receive training under the provisions of this Act."¹⁴⁸ Section 310 of the Act of June 19, 1934 provides that licenses required for the operation of radio stations may not be issued to aliens.¹⁴⁹

The occupational freedom of the aliens seeking admission into the United States was restricted by the provisions of the Immigra-

143 *Takahashi v. Fish and Game Commission* (1948), 334 U.S. 410; 68 S.Ct. 1138 (1948).

144 Chap. 15, Education Law, s 1492, Cahill's Consolidated Laws of New York, Second ed., (Chicago, 1930), 786.

Hyde: International Law, Vol. I, 662 footnote.
145 Rules for Admission to the Bar in the Several States and Territories of the United States, in force as on March 1, 1941, Twenty eighth ed. (St. Paul, 1941). Hyde: International Law, Vol I, 662. It appears that some of the above restrictions have been held unconstitutional.

146 40 U.S.C. ss. 221, 236; Hackworth: Digest, Vol. III, 625.
147 20 U.S.C. ss. 310(i); Hackworth: Digest, Vol. III, 625 footnote.

148 52 Stat. 1008; 53 Stat. 856; Hackworth: Ibid., 625 footnote.

149 48 Stat. 1086; 47 U.S.C. ss. 312; Hackworth: Ibid., 625 footnote.

tion Act of May 26, 1924. The Department of Labour also appears to have been making effort to prevent the aliens from exercising privileges of local trade bereft of international character. Further, non-quota immigrant aliens, such as those permitted by the above Act to enter for purposes of study, are not permitted during their limited period of sojourn in American territory to engage in occupations for gain except for purposes of supplementing income insufficient to cover necessary expenses.¹⁵⁰ Furthermore, under the Immigration and Naturalization Act of 1952 a variety of restrictions have been imposed upon the employment of foreigners in the United States. For instance, Section 212 of the Act provides *inter alia* as follows: "(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States . . .

"(14) Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labour (will be denied entry) if the Secretary of Labour has determined and certified to the Secretary of State and to the Attorney-General that (a) a sufficient number of workers in the United States who are able, willing, and qualified are available at the time . . . and place . . . to perform such skilled or unskilled labour, or (b) the employment of such aliens will adversely affect the wages and working conditions of the workers in the United States similarly employed."¹⁵¹

Similarly, the United States too appears to have acknowledged the right of other States to regulate the professions and industries of all the inhabitants, nationals and non-nationals, residing on their respective territories. Like most other States, it has been taking the view that each territorial sovereign has the discretion to recognize or reject the attainments of individuals trained in other countries. It has acknowledged the propriety of the application of this principle with respect to Americans seeking to practise a learned profession in a foreign State, provided there has been no discrimination against its nationals therein. Thus, in 1933 it declared that it recognized the right of the several Mexican States to prescribe rules and regulations relating to the new admissions to the medical profession insofar as they did not discriminate against American nationals as such.¹⁵²

Nations have been entering into commercial treaties for purposes of securing the occupational freedom for their nationals with-

150 Hyde: International Law, Vol. I, 659-660.

151 66 Stat. 166-281, 8 U.S.C.A. ss. 1101-1503 s. 1182; Katz & Brewster, The Law of International Transactions and Relations, 134.

152 Hyde: International Law, Vol. I, 661.

in the territories of the other contracting parties. Such individuals are permitted to engage in certain enumerated professional and commercial activities which are not forbidden by the local law; to own, erect or lease and occupy appropriate buildings; to employ agents of their choice and generally to do anything incidental to and necessary for the enjoyment of any of the foregoing privileges and rights on terms of equality with the nationals and in conformity with all local laws and regulations duly established. For instance, Article VII of the Treaty of Friendship, Commerce and Navigation concluded between the United States of America and Japan in 1953 provides that: "(1) Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other business activities within the territories of the other Party, whether directly or by agent or through the medium of any form of lawful judicial entity. Accordingly, such nationals and companies shall be permitted within such territories: (a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business; (b) to organize companies under the general company laws of such other Party, to acquire majority interests in companies of such other Party; and (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall, in all that relates to the conduct of the activities thereof, be accorded treatment no less favourable than that accorded to like enterprises controlled by nationals and companies of such other Party." x x x . Paragraphs (2) and (3) of Article VIII provides: "(2) Nationals of either Party shall not be barred from practising the professions within the territories of the other Party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications, residence and competence that are applicable to nationals of such other Party." "(3) Nationals and companies of either Party shall be accorded national treatment and most favoured-nation treatment with respect to engaging in scientific, educational, religious and philanthropic activities within the territories of the other Party, and shall be accorded the right to form associations for that purpose under the laws of such other Party."¹⁵⁴

¹⁵³ Briggs: *The Law of Nations*, 530-531.
Hyde: *International Law*, Vol. I, 659.

¹⁵⁴ In its resolution consenting to the foregoing Treaty of Friendship, Commerce and Navigation between the United States and Japan the U.S. Senate provided: "Article VIII, paragraph (2) shall not extend to profes-

Principles embodied in certain Conventions

The Treaty Establishing the European Economic Community (March 25, 1957)

Article 48

1. The free movement of workers shall be ensured within the Community . . .

2. This shall involve the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration, and other working conditions.

3. It shall include the right, subject to limitations justified by reasons of public order, public safety, and public health:

(a) To accept offers of employment actually made;

(b) To move about freely for this purpose within the territory of Member States;

(c) To stay in any Member State in order to carry on an employment in conformity with the legislative and administrative provisions governing the employment of the workers of that State and;

(d) To live, on conditions which shall be the subject of implementing regulations to be laid down by the Commission, in the territory of a Member State after having been employed there.¹⁵⁵

The Treaty Establishing the Benelux Economic Union (February 3, 1958)

Article 2

x x x

(2) They (i.e., the nationals of each High Contracting Party) shall enjoy the same treatment as nationals of that State as regards:

sions which because they involve the performance of functions in a public capacity or in the interest of public health and safety, are State licensed and reserved by Statute or Constitution exclusively to the citizens of the country, and no most-favoured-nation clause in the said treaty shall apply to such professions."

⁹⁹ Cong. Records 9339 (July 21, 1955) United States Treaties and other International Agreements (1953), Vol. 4, Part 2, 2069-2070. This Treaty was signed in Tokyo on April 2, 1953, Katz & Brewster: *The Law of International Transactions and Relations*, 169-170; Similar provisions have been incorporated in several other treaties also. For instance, Art. (1) of the Treaty of Friendship, Commerce and Navigation entered into between the United States of America and the Italian Republic in 1948; and Arts. VII, VIII and XI of the Treaty of Friendship, Commerce and Navigation concluded between the United States and Germany in 1954 provide for the right of the nationals of either Contracting Party, to engage in commercial, professional and cognate activities within the territories of the Contracting Party; Briggs: *The Law of Nations*: 530-531 & 542-547; United States Treaties and Other International Agreements (1956) Vol. 7, Part 2, 1839-1869.

- (a) freedom of movement, sojourn and settlement;
 - (b) freedom to carry on a trade or occupation, including the rendering of services;
- x x x 156

Article 10

An alien shall not be entitled to any political rights, including the right of suffrage, nor shall he be entitled to engage himself in political activities, except as otherwise provided by local laws, regulations and orders.

Commentary

Alien's exclusion from political activities

It is a well-established principle of international law that an individual in a foreign State is subject to the territorial supremacy of that State and that he is responsible to the latter for all wrongful acts he commits on its territory. He owes allegiance, which continues during the period of his residence, to the government of that State. From the duty of obedience flows the duty to abstain from engaging in injurious political activities in the State in which he resides. If an alien attempts to foment sedition, insurrection or other disorders, he becomes liable for prosecution for treason in the same manner as the nationals of that State. Thus, this principle which has been firmly established not only by the weight of authority of publicists but also by the sustained practice of States, has been incorporated in this Article.

Alien's exclusion from the exercise of political rights

Under this Article an alien is not entitled to the enjoyment and exercise of political rights. The practice of States indicates that the alien as a rule is excluded from the exercise of political rights in the State in which he resides. The term 'political rights', as interpreted and applied by the practice of States normally includes the right of suffrage, the right to hold high public office and the right to act as a juror.

It may be added that the above rights and duties of aliens are subject to applicable local laws, regulations and orders of the State of residence. This means that although aliens are not normally admitted to the exercise of political rights, they may be

156 Katz and Brewster: *The Law of International Transactions and Relations*, 82.
The Guardian (Manchester), July 5, 1961; The Economist (London), June 17, 1961, 1203-1206.

permitted to occupy some public offices and may even be required to render jury service, if the constitutional or public laws as well as the regulations of the State within the territory of which he resides so require or permit.¹⁵⁷

Opinions of Writers

Oppenheim says: With his entrance into a State, an alien, unless he belongs to the class of those who enjoy so-called extraterritoriality, falls at once under the territorial supremacy of that State. . . . He is therefore under the jurisdiction of the State in which he stays. x x x It must be emphasized that an alien is responsible to the local State for any illegal acts which he commits while the territory concerned is during war temporarily occupied by the enemy x x x A State can exclude aliens from certain professions and trade . . . Before the First World War there was a tendency to treat admitted aliens more and more on the same footing as citizens—political rights and duties, of course excepted.¹⁵⁸

According to **Hackworth**, "aliens are not as a rule admitted to the exercise of political rights. They are generally excluded from holding office under the Government x x x The right of aliens to hold public office . . . is determined by (the) Constitutions and laws (of the States) x x x Citizenship is very generally prescribed as a prerequisite to jury service . . ."¹⁵⁹

Cutler maintains that "It is a commonplace that the foreigner owes a temporary obedience to the State in which he resides. The measure of this obligation varies with the relative permanence of the sojourn, but all aliens are subject to the local civil and criminal law . . . In addition to the duty of obedience aliens may be required to abstain from political agitation, and in fact from all matters which may be said to concern citizens exclusively. The penalty of the alien's intrusion into politics may be expulsion, or even assimilation to the national's political liabilities. The limitation also extends as a rule to public office, to jury service, and expressly or by implication to the exercise of franchise although in exceptional cases aliens may occupy municipal and the ordinary administrative posts and may be allowed or even required to serve on juries. Also resident aliens or declarants when the law makes them State citizens are sometimes allowed to vote.¹⁶⁰

157 Oppenheim: *International Law*, Vol. 1, op. cit., 679-680.

158 Oppenheim: *Ibid.*, 679, 682, 689.

159 Hackworth: *Digest of International Law*, Vol. III, op. cit., 559-561.

160 Cutler, J. W.: "The Treatment of Foreigners," *American Journal of International Law*, (1933) Vol. 27, 227-228.

Practice of Member States of the Committee

In the matter of alien's political rights and duties, the practice of the member States of the Committee appears to be similar to that of most States. Broadly, an alien is not admitted to the exercise of political rights including the right of franchise, nor shall he be entitled to engage himself in the political activities in the State of residence. However, in the view of these States, since each State has the unlimited discretion in the matter, it can decide for itself whether or not to allow aliens certain political rights. Similarly it can determine for itself the problem of alien's participation in its political activities. In a word, the extent of the alien's political rights and the admissibility and scope of his participation in the political affairs are dependent entirely upon the applicable local laws, regulations and orders. Further, as an alien domiciled or resident in a State owes to that government a local and temporary allegiance and also is subject to its territorial jurisdiction, he is obliged to submit to all local laws, regulations and orders duly established and for the violation of which he may be prosecuted and punished just as a national of that State.

The constitutional and public laws of these countries normally confine the right of suffrage to individuals who are their own nationals. For instance, under the Constitution of the Union of Burma only Burmese citizens have the right to vote at any election to the Parliament of Burma (Article 76(2)).¹⁶¹ As regards the qualifications of an elector in Pakistan Article, 143(1) of the Constitution of the Islamic Republic of Pakistan lays down *inter alia* that he may be a citizen of Pakistan.¹⁶²

Aliens are generally excluded from holding high public offices. For instance, under the Constitution of the Union of Burma, the President must be a citizen of the Union who was, or both of whose parents were, born in any of the territories included within the Union. (Article 49).¹⁶³ Articles 58 and 66 of the Constitution of India declare that no person shall be eligible for election as President or as Vice-President unless he is a citizen of India.¹⁶⁴ Similarly clause (5) of Article 45 of the Constitution of Indonesia requires *inter alia* that the President and Vice-President of Indonesia must be Indonesian citizens.¹⁶⁵ Article 2 of the Constitution of Japan enacts that the "Imperial Throne shall be dynastic and

¹⁶¹ Peaslee: *Constitutions of Nations*, Vol. I, 285.

¹⁶² Brohi: *Fundamental Law of Pakistan*, (Karachi, 1958), 139, 886.
Chowdhury: *Constitutional Development in Pakistan* (Lahore, 1959), 226.

¹⁶³ Peaslee: *Constitutions of Nations*, Vol. I, 291.

¹⁶⁴ Peaslee: *Constitutions of Nations*, Vol. II, 235, 237.

¹⁶⁵ Peaslee: *Ibid.*, 377.

succeeded to in accordance with the Imperial House Law passed by the Diet."¹⁶⁶

Practice of States other than Member States of the Committee

The generality of State practice indicates that aliens have no political rights and duties. They are normally excluded from holding important public offices. But in some States minor administrative posts are open to foreign nationals also. Such exclusions and concessions must be attributed to the policy of the State rather than to any requirement of the law of nations.

The right to the exercise of franchise is generally determined by the constitutional provisions of each country. For instance, under Article 23 of the Constitution of the Federal People's Republic of Yugoslavia all citizens of the Republic of Yugoslavia who are over eighteen years of age have the right of suffrage in Yugoslavia i.e., they have the right to elect and be elected to all organs of State authority.¹⁶⁷ The right to the exercise of franchise in the United States is determined by the laws of the various component States, subject to the provisions of the 15th and 19th Amendments to the Constitution of the United States.¹⁶⁸ In a multitude of cases, the Courts of the United States held that the aliens are not qualified to vote.¹⁶⁹ Under Section 1460 of title 48 of the United States Code, it is provided that in any territory organized by Congress the qualifications of voters and of office holders "shall be such as may be prescribed by the legislative assembly of each territory" subject to the condition that—"... The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such and have taken an oath to support the Constitution and Government of the United States."¹⁷⁰

Aliens are not normally required to render jury service. But in exceptional cases they may be allowed or even required to serve on juries.¹⁷¹ In the United States, like most other States, citizen-

¹⁶⁶ The Constitution of Japan and Criminals Statutes (Japan, 1958), 4; According to Articles 42 and 43 of the Constitution of Japan the Diet, which is the highest organ of State power and the sole-law-making organ of the State, shall consist of two Houses—the House of Representatives and the House of Councillors; The Constitution of Japan, *ibid.*, 10.

¹⁶⁷ Peaslee: *Constitutions of Nations*, Vol. III, 760.

¹⁶⁸ Peaslee: *Constitutions of Nations*, Vol. III, 595.

¹⁶⁹ *Gardina v. Board of Registrars of Jefferson County*, 160 Ala. 155, 48 So. 788 (1909).

¹⁷⁰ *Campbell v. Ramsey*, 150 Kans. 368. Hackworth: *Digest*, Vol. III, 560 footnote.

¹⁷¹ *Cutler: The Treatment of Foreigners*, op. cit., 227-228.