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ALIENS AND THE PRACTICE OF LAW:
RAFFAELLI v. COMMITTEE OF BAR EXAMINERS[1]

Paolo Raffaelli, an alien, was denied admission to the California State Bar despite his graduation from an accredited California law school and subsequent successful performance on the California bar examination. The Committee of Bar Examiners' refusal to certify Raffaelli for admission to the practice of law was based upon section 6060 of the California Business and Professions Code, which provides, *inter alia*, that an applicant for admission to the Bar must be a citizen of the United States.[2]

Raffaelli is a native-born citizen of Italy who came to the United States in 1959 on an exchange program. After a short return to Italy, he reentered the United States in 1961 as a foreign student and was authorized to remain until he completed his education.[3] In June, 1966, Raffaelli received a bachelor's degree in Industrial Relations and Personnel Management from San Jose State College. He then entered the University of Santa Clara School of Law, from which he received a law degree in June, 1969. The following September he took and passed the California bar examination and thereafter was employed as a law clerk.[4]

By application to the California Supreme Court for an original writ of mandate, Raffaelli sought to compel the Committee of Bar Examiners to certify him for admission to the practice of law. He claimed that his exclusion based solely on his alienage denied him equal protection of the law,[5] since the statutory citizenship requirement discriminated against

1. 7 Cal. 3d 288, 496 P.2d 1264, 101 Cal. Rptr. 896 (1972).

2. The pertinent part of the statute provides:

"To be certified to the Supreme Court for admission and a license to practice law, a person . . . shall:

(a) Be a citizen of the United States.

CAL. BUS. & PROF. CODE ANN. § 6060 (West Supp. 1973).

The *Raffaelli* court reviewed the history of this citizenship requirement and other statutory impediments to admission to the bar. It is of interest that for 70 years, from 1861 to 1931, with certain limitations, aliens were eligible to practice law in the State of California. 7 Cal. 3d at 295, 496 P.2d at 1269, 101 Cal. Rptr. at 901.

3. 7 Cal. 3d at 291, 496 P.2d at 1266, 101 Cal. Rptr. at 898.

4. *Id.* Raffaelli married a United States citizen following the bar examination, and was consequently granted permanent resident alien status, making him eligible for naturalization in September, 1974. *Id.*

5. *Id.* at 292, 496 P.2d at 1267, 101 Cal. Rptr. at 899.

aliens without promoting any compelling state interest. In reply, the Committee of Bar Examiners advanced five reasons which it felt justified the distinction drawn by the law between citizens and aliens: a lawyer must appreciate the spirit of American institutions; he must take an oath to support the Constitutions of the United States and California; he must remain accessible to his clients and subject to the control of the Bar; the practice of law is a privilege, not a right; and a lawyer is an officer of the court and hence should be a citizen.[6]

Justice Mosk, writing for a unanimous court,[7] carefully refuted each of these arguments, and concluded:

> "The classification within the statutory scheme operates irrationally without reference to any legitimate state interest except that of favoring United States citizens over citizens of other countries. This latter objective does not reflect such a compelling state interest that it would permit us to sustain this kind of discrimination."[8]

The court consequently voided subdivision (a) of section 6060 of the California Business and Professions Code and explicitly overruled *Large v. State Bar*,[9] a prior California case specifically upholding the citizenship requirement.

Throughout United States history, aliens have been excluded from various occupations by legislative enactments. Justifications for this exclusion have traditionally been based on self-serving motivations which, while slowly being attacked, nevertheless persist. The courts, in upholding such discriminatory legislation, have frequently rationalized that aliens are not familiar or sympathetic with the government or with the social order,[10] or that the states, through their police power, may

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6. Id. at 296-301, 496 P.2d at 1269-73, 101 Cal. Rptr. at 901-05.

7. Justice Tobriner did not participate in the decision of the case.

8. 7 Cal. 3d at 303-04, 496 P.2d at 1275, 101 Cal. Rptr. at 907, *quoting* Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 585, 456 P.2d 645, 658, 79 Cal. Rptr. 77, 90 (1969). The decision of the court, however, did not ipso facto admit Raffaelli to the bar. Within thirty days after the announcement of the decision, the Committee of Bar Examiners was to determine if Raffaelli were of good moral character, and, if so, he was then to be certified for admission. 7 Cal. 3d at 305, 496 P.2d at 1275, 101 Cal. Rptr. at 907; *see* CAL. BUS. & PROF. CODE ANN. § 6060(c) (West Supp. 1973).

9. 218 Cal. 334, 23 P.2d 288 (1933), *overruled*, 7 Cal. 3d at 302, 496 P.2d at 1273, 101 Cal. Rptr. at 905. The *Raffaelli* court pointed out:

> The opinion in *Large*, however, merely listed without discussion several of the traditional grounds for exclusion hereinabove shown to be without merit, and relied in particular on a North Carolina case decided in 1824—i.e., *44 years before the ratification of the Fourteenth Amendment.* 7 Cal. 3d at 301, 496 P.2d at 1273, 101 Cal. Rptr. at 905 (emphasis added).

10. *See, e.g.*, Large v. State Bar, 218 Cal. 334, 335, 23 P.2d 288 (1933); *cf.* People v. Cannizzarro, 138 Cal. App. 28, 31 P.2d 1066 (1934).

prohibit employment of aliens in occupations of an antisocial nature.[11] Such rationales have been used to restrict aliens from selling intoxicating liquors,[12] hawking and peddling,[13] and engaging in numerous other occupational endeavors.[14]

Courts have also frequently adopted a "proprietary" theory as the most persuasive justification for the exclusion of aliens.[15] This theory, based on the common law doctrine that a state holds property in trust for its citizens, is invoked to establish that aliens do not stand in the same relationship to state property and the right to employment or licensing as do citizens.[16]

It has been suggested that the majority of legislative restrictions resulted from pressure brought to bear on the legislature by those already in the occupation or profession to prevent *competition* by aliens.[17] But with other, more acceptable, rationalizations at hand, competition was usually not asserted as a justification by the courts. However, in *The Chinese Exclusion Case*,[18] upholding an act of Congress excluding Chinese laborers from the United States, the United States Supreme Court was forthright in dealing with the problem of competition, which the Court expressly referred to as the motivation behind the legislation:

> These laborers readily secured employment, and, as domestic servants, and in various kinds of out-door work, proved to be exceedingly useful. For some years little opposition was made to them. . . . The competition steadily increased as the laborers came in crowds. . . . The competition between them and our people was . . . in their favor.[19]

11. *See, e.g.*, Ohio *ex rel.* Clarke v. Deckebach, 274 U.S. 392 (1927) (aliens restricted from opening pool halls).

12. Tokaji v. State Bd. of Equalization, 20 Cal. App. 2d 612, 67 P.2d 1082 (1937).

13. Commonwealth v. Hana, 81 N.E. 149, 150-51 (Mass. 1907) (dictum).

14. Gizzarelli v. Presbrey, 117 A. 359 (R.I. 1922) (serving as bus drivers); *see* Note, *Constitutionality of Restrictions on Aliens' Right to Work*, 57 COLUM. L. REV. 1012, 1921-22 (1957) [hereinafter cited as *Right to Work*].

15. *Cf.* Pastone v. Pennsylvania, 232 U.S. 138, 145-46 (1914); McCready v. Virginia, 94 U.S. 391 (1877).

16. However, Graham v. Richardson, 403 U.S. 365 (1971), casts doubt upon the validity of the proprietary rationale. See text accompanying notes 90-91 *infra*.

17. Comment, *The Alien and the Constitution*, 20 U. CHI. L. REV. 547, 566 (1953).

18. Chae Chan Ping v. United States, 130 U.S. 581 (1889). The appeal considered the validity of the Act of Congress of October 1, 1888, prohibiting Chinese laborers, who had departed before its passage with certificates granting them permission to return, from reentering the United States. The Act was challenged as violative of a United States-China treaty and of rights vested in the Chinese laborers under laws of Congress. *Id.* at 589.

19. *Id.* at 594-95. One author has suggested that the legislative pressures behind these restrictions were not benignly motivated.

> Anyone acquainted with the way our legislatures operate knows that [acts barring aliens from various occupations] are not sponsored by public-spirited persons or

Another case recognizing prevention of competition as the dominant motivation is *Sei Fujii v. State*,[20] wherein the California Alien Land Law[21] was attacked and found violative of both the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Attorney General had asserted the purpose of the law to be to "restrict the use and ownership of land to persons who are loyal and have an interest in the welfare of the state."[22] However, the California Supreme Court confronted the issue of competition directly, noting:

> "[The] primary purpose is to prohibit Orientals who cannot become American citizens from controlling our rich agricultural lands . . . [C]ontrol of these rich lands means in time control of the products and control of the markets."[23]

As early as 1885, challenges against discriminatory legislation were being asserted based on the Equal Protection Clause of the Fourteenth Amendment.[24] In *Yick Wo v. Hopkins*,[25] the city and county of San Francisco had adopted an ordinance requiring a license to operate a public laundry in a wooden building. While the ordinance appeared on its face to be a valid exercise of the police power, it was applied arbitrarily to deny the Chinese, and only the Chinese, consent to operate their laundries.[26] Ruling against such discriminatory enforcement of the ordinance, the Supreme Court noted:

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groups, or by persons interested not in furthering their selfish aims but only in the public welfare; such acts are not sponsored by consumer-interest groups; they are offered and "pressured" by the organized business, profession, or calling . . . . Such laws are directed to the elimination of competition from aliens qualified to engage in the callings. M. KONVITZ, THE ALIEN AND THE ASIATIC IN AMERICAN LAW 172 (1946) [hereinafter cited as KONVITZ].

Such legislation indicates that the group sponsoring it has power at the polls, while aliens, who do not enjoy suffrage, lack effective impress on lawmaking bodies. *Right to Work*, *supra* note 14, at 1013.

20. 38 Cal. 2d 718, 242 P.2d 617 (1952).

21. This law provided, *inter alia*, that aliens ineligible for citizenship could own and deal in real property only to the extent authorized by a treaty between the United States and the alien's nation, and that any property acquired in violation of the requirement should escheat to the State of California. Alien Land Law, 1 CAL. GEN. LAWS ANN. act 261, §§ 2, 7 (Deering 1920), *as amended*, ch. 1129, [1945] Cal. Stat. 2164.

22. 38 Cal. 2d at 732, 242 P.2d at 627.

23. *Id.* at 735, 242 P.2d at 628, *quoting* from the argument presented in favor of adoption of the Alien Land Law in the 1920 voters pamphlet.

24. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1; *see* Yick Wo v. Hopkins, 118 U.S. 356 (1886); Soon Hing v. Crowley, 113 U.S. 703 (1885); Barbier v. Connolly, 113 U.S. 27 (1885); *In re* Sam Kee, 31 F. 680 (1887); The Stockton Laundry Case, 26 F. 611 (C.C.D. Cal. 1886); *In re* Wo Lee, 26 F. 471 (C.C.D. Cal.), *rev'd*, 118 U.S. 356 (1886).

25. 118 U.S. 356 (1886).

26. *Id.* at 366-67.

> [T]he facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, [the ordinances] are applied by the public authorities . . . with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured . . . by the broad and benign provisions of the Fourteenth Amendment.[27]

One of the principles enunciated in *Yick Wo* was that the term "person" in the Fourteenth Amendment applies to *all* persons within the territorial jurisdiction of the United States, aliens as well as citizens.[28] Yet even the Equal Protection Clause does not afford the alien coequal status with the citizen with respect to all laws of the states.[29] Not only does an alien have no voting power,[30] he acquires no vested right to remain in the state, since he is subject to expulsion on grounds fixed by Congress.[31]

Justice Mosk, in *Raffaelli,* referred to section 6060's exclusion of aliens from the practice of law in California as the "lingering vestige of a xenophobic attitude" which should join similar "anachronistic classifications among the crumbled pedestals of history."[32] Yet, notwithstanding the forthrightness of this assertion, it is questionable if fear of foreigners is but a "lingering vestige," since California, after the *Raffaelli* decision, is one of only a few states now permitting aliens to practice law,[33] and since almost all states have restrictions on various other occupations.[34]

The *Raffaelli* court observed that attacks upon the constitutionality of statutory classifications which are alleged to be violative of the Equal Protection Clause are subjected to two generally accepted standards of

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27. *Id.* at 373.

28. *Id.* at 369. The *Raffaelli* court reemphasized this basic constitutional doctrine. 7 Cal. 3d at 292, 496 P.2d at 1267, 101 Cal. Rptr. at 899, *quoting* Graham v. Richardson, 403 U.S. 365, 371-72 (1971).

29. C. GORDON & H. ROSENFIELD, IMMIGRATION LAW AND PROCEDURE § 1.31 (1972) [hereinafter cited as GORDON & ROSENFIELD].

30. CAL. CONST. art. II, § 1; *see* Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 580, 456 P.2d 645, 654, 79 Cal. Rptr. 77, 86 (1969).

31. *See* GORDON & ROSENFIELD, *supra* note 29, § 1.32.

32. 7 Cal. 3d at 291, 496 P.2d at 1266, 101 Cal. Rptr. at 898.

33. The only states other than California in which it is possible for an alien to practice law are: Alaska, Arkansas, Delaware and South Carolina. In the remainder of the states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands, United States citizenship is required. RULES FOR ADMISSION TO THE BAR IN THE UNITED STATES AND TERRITORIES (West 1972).

34. *See Right to Work, supra* note 14, at 1012 n.3, which cites numerous statutes imposing restrictions on aliens' occupational opportunities.

review.[35] The traditional standard requires only that the use of a state statutory classification be rationally related to the furtherance of a legitimate state interest.[36] Courts must "reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose."[37] Generally, in the business and economic areas, the courts have entertained a presumption of constitutionality[38] and have deferred to the legislatures on questions of equal protection.[39] However, other statutory measures are subjected to greater scrutiny by the courts because they concern classifications which have justifiably been denominated as "suspect."[40] Distinctions based on race[41] or alienage,[42] for example, are considered inherently suspect.[43] Measures which include

35. 7 Cal. 3d at 292, 496 P.2d at 1267, 101 Cal. Rptr. at 899.

36. *See, e.g.*, McGowan v. Maryland, 366 U.S. 420 (1961); F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920).

37. McLaughlin v. Florida, 379 U.S. 184, 191 (1964).

38. *See, e.g.*, Borden's Farm Products Co. v. Ten Eyck, 297 U.S. 251 (1936), wherein a New York statute, which had discriminated between milk dealers who had well advertised trade names and those who did not by allowing the later to sell bottled milk in New York City at a price one cent less per quart, was found not to violate the Equal Protection Clause. The Court held that a dealer of the former class who failed to show loss of trade or substantial loss *did not prove* violation of the Equal Protection Clause. In Hollywood Turf Club v. Daugherty, 36 Cal. 2d 352, 224 P.2d 359 (1950), the California Supreme Court upheld detailed legislation regulating horse racing where wagering was involved. *See* County of Los Angeles v. Southern Cal. Tel. Co., 32 Cal. 2d 378, 196 P.2d 773 (1948). *Contra,* Mayflower Farms v. Ten Eyck, 297 U.S. 266 (1936), where a state statute discriminated between milk dealers without well advertised trade names who were in business before a certain date and those who entered business after that date by granting to the former the privilege of selling milk at a lesser price. The Court ruled that the discrimination was *arbitrary and unreasonable* and in violation of the Equal Protection Clause.

39. Williamson v. Lee Optical, 348 U.S. 483 (1955). The legitimacy of the state's purpose is rarely questioned and,

> [s]ince the process of attributing purpose in equal protection decisions depends heavily on inferences from the statutory provisions and since the classification is itself one of the determinant provisions, the inferred purpose will in large measure be a reflection of the classification. Consequently, the relation between the two is likely to be clear. Thus, when the purpose of a differential tax law is inferred to be encouragement of one industry but not another, the *classification's relevance to purpose will be indisputable. Developments in the Law—Equal Protection,* 82 HARV. L. REV. 1065, 1087 (1969) (emphasis added).

40. 7 Cal. 3d at 292, 496 P.2d at 1267, 101 Cal. Rptr. at 899; Graham v. Richardson, 403 U.S. 365, 371-72 (1971).

41. Loving v. Virginia, 388 U.S. 1, 9 (1967); McLaughlin v. Florida, 379 U.S. 184, 191-92 (1964); Bowling v. Sharpe, 347 U.S. 497, 499 (1954).

42. Oyama v. California, 332 U.S. 633, 640 (1948); Korematsu v. United States, 323 U.S. 214, 216 (1944); Hirabayshi v. United States, 320 U.S. 81, 100 (1943). In *Oyama* the Supreme Court indicated that "the State has discriminated against Fred Oyama; the discrimination is based solely on his parents' country of origin; and there is absent the compelling justification which would be needed to sustain discrimination of that nature." 332 U.S. at 640.

43. In Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971),

such classifications may be justified only by a *compelling* state interest,[44] and the distinctions drawn must be necessary to further the state purpose.[45]

While the *Raffaelli* court recognized that " '[a] State can require high standards of qualifications, such as good moral character or proficiency in its law,' " it quickly pointed out that " 'any qualification must have *a rational connection with the applicant's fitness or capacity to practice law.*' "[46] In reaching its decision, the court relied heavily on the reasoning of *Purdy & Fitzpatrick v. State*,[47] wherein a contractor brought suit to recover a fine assessed for violating California Labor Code section 1850,[48] which made it illegal, except under extraordinary circumstances, to employ aliens on a public works project. Justice Tobriner's opinion, holding the Labor Code section unconstitutional as violative of the Equal

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wherein the financing scheme of California schools was found to be unconstitutional due to disparities among individual school districts in the amount of revenue available per pupil, the court found that the educational grants invidiously discriminated against the poor. The court rejected the thesis that classification by wealth is constitutional as long as the wealth is that of the district and not of the individual, and, finding wealth to be a suspect classification, invalidated the system of financing. Although the vitality of equal protection arguments based on wealth has recently been restricted by the United States Supreme Court in James v. Valtierra, 402 U.S. 137 (1971), dissents were registered by some, including Justice Marshall, who felt wealth (or poverty) to be "a suspect classification which demands exacting judicial scrutiny." *Id.* at 145; *see* Notes, 5 LOY. L.A.L. REV. 162, 174-75, 368, 380 (1972). The United States Supreme Court refused to adopt the *Serrano* rationale in San Antonio Independent School Dist. v. Rodriguez, 93 S. Ct. 1278 (1973).

44. 7 Cal. 3d at 301, 496 P.2d at 1273, 101 Cal. Rptr. at 905; *see, e.g.*, Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969).

45. 7 Cal. 3d at 301, 496 P.2d at 1273, 101 Cal. Rptr. at 905. Justice Marshall, in Dunn v. Blumstein, 405 U.S. 330, 342 (1972), clearly articulated the dual nature of this test. The words "compelling" and "necessary" emphasize that the test is essentially a question of degree; "that a heavy burden of justification is on the State, and that the statute will be closely scrutinized in light of its asserted purpose" (*id.* at 343); and, once a state has shown that a particular statute furthers its interest, "if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a state may not choose the way of greater interference." *Id.* There is no precision in such a test; rather, the test implies a judicial determination of the emphasis to be placed on the elements of the standard.

In Hall v. Beals, 396 U.S. 45 (1969), an action to enjoin enforcement and operation of Colorado laws imposing residency requirements for voting in Presidential elections, Justice Marshall expressed the standard in somewhat similar terms:

> [O]nce a State has determined that a decision is to be made by popular vote, it may exclude persons from franchise only upon showing of a compelling interest, and even then only when the exclusion is the least restrictive method of achieving the desired purpose. *Id.* at 52 (Marshall, J., dissenting).

46. 7 Cal. 3d at 294, 496 P.2d at 1268, 101 Cal. Rptr. at 900, *quoting* Schware v. Board of Bar Examiners, 353 U.S. 232, 238-39 (1957) (emphasis by *Raffaelli* court).

47. 71 Cal. 2d 566, 456 P.2d 645, 79 Cal. Rptr. 77 (1969).

48. Ch. 398, [1937] Cal. Stat. 913.

Protection Clause, was a straightforward application of the suspect classification-compelling state interest approach. Invoking the strict standard of review, the supreme court ruled, *inter alia,* that the Labor Code section arbitrarily discriminated against aliens by denying them the right to an otherwise lawful occupation merely because of their status.[49] The court noted that

> the state may not arbitrarily foreclose to any person the right to pursue an otherwise lawful occupation. Any limitation on the opportunity for employment impedes the achievement of economic security, which is essential for the pursuit of life, liberty and happiness . . . .[50]

Purdy thus held that a state cannot freely prescribe the terms and conditions of public employment in contravention of the Equal Protection Clause of the Fourteenth Amendment. In addition, due to the alien's precarious position in not having voting power (as distinguished from other groups subjected to discriminatory legislation), the court provided a special mandate to guard the interests of the alien.[51]

Although it was not until *Purdy* that a statute specifically excluding aliens from public works projects was abrogated, the death of the proprietary rationale was presaged in *Takahashi v. Fish & Game Commission.*[52] In that case the United States Supreme Court considered a statute which prohibited aliens ineligible for citizenship[53] from fishing in California's coastal waters. Conceding that the purpose of such a law might be conservation of the fish,[54] the Court held that a state could not constitutionally base the exclusion of any or all of its residents from

49. 71 Cal. 2d at 585, 456 P.2d at 658, 79 Cal. Rptr. at 90.

50. *Id.* at 579-80, 456 P.2d at 654, 79 Cal. Rptr. at 86, *quoted in Raffaelli,* 7 Cal. 3d at 293, 496 P.2d at 1267, 101 Cal. Rptr. at 899.

51. 71 Cal. 2d at 579-80, 456 P.2d at 654, 79 Cal. Rptr. at 86. The court noted:

> [P]articular alien groups and aliens in general have suffered from such prejudice. Even without such prejudice, aliens in California, denied the right to vote, lack the most basic means of defending themselves in the political process. Under such circumstances, courts should approach discriminatory legislation with special solicitude. *Id.* (footnotes omitted).

The utilization of this stricter standard of review accounts for the variance of the *Purdy* holding from two early twentieth century cases, Crane v. New York, 239 U.S. 195 (1915), and Heim v. McCall, 239 U.S. 175 (1915), which were factually similar to *Purdy.* In both *Crane* and *Heim* the United States Supreme Court upheld the statutes excluding aliens from public works projects. The Court relied on the rationale that the state, as guardian and trustee for its people, and having control of its affairs, could prescribe the conditions upon which it would permit work to be done, and that the law, being of public character, did not infringe upon the liberty of anyone.

52. 334 U.S. 410 (1948).

53. The Supreme Court refused to limit its holding to aliens ineligible for citizenship and applied it to all aliens. *Id.* at 418, 421.

54. Perhaps here, again, the competitive anxiety may have been the more compelling reason. See notes 17-23 *supra* and accompanying text.

employment as offshore fishermen upon a state claim to ownership of the fish. The Court was unable to find that the "special public interest," upon which the state had relied, provided support for the ban on commercial fishing by aliens.[55]

The *Purdy* court articulated three crucial concepts which had been generally discussed in *Takahashi.* First, the court would apply a strict standard of review to all state laws which classify persons on the basis of alienage; second, the court would reject the state's proprietary interest in its resources as a justification for discrimination against a particular class; and third, employment in a particular occupation is a significant, if not fundamental, interest.[56]

The first concept relates to the procedural question of burden of proof which is of paramount importance in the ultimate determination of the validity of the legislative distinction in question. In viewing classifications under the traditional standard, the presumption of constitutionality is invoked,[57] and the burden of proof is upon the party challenging the classification.[58] However, when a challenge is made to a state statute which creates a "suspect" classification, contravenes a specific prohibition of the Constitution or infringes a fundamental right, the burden is cast upon the state to show that the law serves to promote a compelling state interest.[59] In the latter instance, there is said to be a "narrower scope for operation of the presumption of constitutionality."[60]

55. 334 U.S. at 420. The "special public interest" refers to the state's claim that its citizens were the "collective owners of fish swimming in the three-mile belt." *Id.*

56. 71 Cal. 2d at 584-85, 456 P.2d at 657, 79 Cal. Rptr. at 89; *see* 334 U.S. at 420.

57. *See, e.g.,* Railway Express Agency v. New York, 336 U.S. 106 (1949); County of Los Angeles v. Southern Cal. Tel. Co., 32 Cal. 2d 378, 196 P.2d 773 (1948). See note 38 *supra.*

58. *See, e.g.,* McGowan v. Maryland, 366 U.S. 420 (1961), wherein the Court ruled that a state statute which prohibited the sale of certain retail goods on Sundays (Sunday Closing Law or Sunday Blue Law) did not violate the Equal Protection Clause. The Court pointed out:

> *State legislatures are presumed to have acted within their constitutional power* despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any set of facts reasonably may be conceived to justify it. *Id.* at 425-26 (emphasis added).

The Court declared that the record was barren of any indication that a reasonable basis did not exist. *Id.* at 426. While it was alleged that the statute violated the constitutional guarantee of freedom of religion, the plaintiffs had alleged only *economic* injury. *Id.* at 429. See note 38 *supra.* They had not alleged any infringement of their *own* religious freedom. Presumably, if the latter had been proven, a greater showing of state interest—a compelling interest—would have been needed to justify the statute since a fundamental constitutional right would have been directly endangered.

59. 7 Cal. 3d at 295, 101 Cal. Rptr. at 901, 496 P.2d at 1269; Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 579, 456 P.2d 645, 654, 79 Cal. Rptr. 77, 86 (1969).

60. United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938).

As a result of imposition of the strict standard, coupled with the state's procedural burden, it would appear the courts have, in fact, created a presumption of unconstitutionality.

The rule that the state must bear the burden of asserting a compelling state interest in cases involving unequal treatment of aliens certainly seems well founded. The danger of infringement of constitutional rights is substantial and the alien would find it extremely difficult to establish the lack of a legitimate state interest if the burden were shifted to him:

> "If alien discriminations are permitted to stand unless the alien can prove factually that the legislature was unreasonable, then in many cases he must give up the task for it is frequently impossible to submit facts which would establish the negative proposition that there is a complete absence of relationship between the exclusion of the alien and the public welfare."[61]

The State, in *Raffaelli*, presented several propositions in attempting to fulfill its burden of establishing a compelling interest in requiring United States citizenship as a prerequisite for admission to the Bar. The court analyzed and rejected each of these propositions, finding them insufficient to support the statutory requirement.

First, the State claimed that a lawyer must appreciate the spirit of American institutions.[62] The court recognized that, to the extent this interest implies a basis of exclusion for unpopular convictions, it could not be supported.[63] Notwithstanding an applicant's particular beliefs concerning American institutions, the First Amendment " 'prohibits a State from excluding a person from a profession or punishing him solely because he is a member of a particular political organization or because he holds certain beliefs.' "[64] In *Baird v. State Bar*, [65] an Arizona Bar applicant had refused to answer a question as to whether she had ever been a member of the Communist Party, and the Bar Committee refused to process her application. The United States Supreme Court ruled that the First Amendment protects an applicant for admission to the practice

61. KONVITZ, *supra* note 19, at 181, *quoting* O'Connor, *Constitutional Protection of the Alien's Right to Work*, 18 N.Y.U.L.Q. 483, 493 (1941). For example, suppose the legislature excluded redheaded men from employment as taxi drivers. Such a man would find it difficult to prove that the statute directed against his class was unreasonable. "About all he could say is that everybody knows that red headed men drive as well as other people." KONVITZ, *supra* note 19, at 181.

62. 7 Cal. 3d at 296, 496 P.2d at 1269, 101 Cal. Rptr. at 901.

63. *Id.*

64. *Id.*, *quoting* Baird v. State Bar, 401 U.S. 1, 6 (1971); *accord*, Konigsberg v. State Bar, 353 U.S. 252 (1957); Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); *cf.* Wieman v. Updegraff, 344 U.S. 183 (1952).

65. 401 U.S. 1 (1971).

of law from "being subjected to a question potentially so hazardous to her liberty."[66] While prior acts could, under certain circumstances, be a subject of inquiry, "views and beliefs are immune from bar association inquisitions designed to lay a foundation for barring an applicant from the practice of law."[67]

It would appear more likely, however, that the assertion by the State in *Raffaelli* related to a general understanding of the theory and practice of the American government and social system. The court recognized that this was a legitimate state interest,[68] but noted there was no showing that the exclusion of aliens promoted that interest:

> Nor has it been established that aliens as a class are incapable of possessing such understanding. Knowledge of this kind is acquired in many ways, both formal and informal. It comes not so much from the accident of birth as from the experience of the daily life of the community and the role of government in that life. . . . [T]here is no prescribed minimum number of years that a person must reside in the United States in order thus to "appreciate" our institutions.[69]

Raffaelli, himself, the court pointed out, had demonstrated his appreciation of the spirit of American institutions by settling in California, marrying an American girl and completing his undergraduate and legal education in California schools.[70]

As its second claim, the State asserted that a lawyer must take an oath to support the Constitution of the United States and California.[71] The court, relying on its previous First Amendment discussion, noted initially that to inquire into the "loyalty" of a prospective lawyer would be to "skate on very thin constitutional ice."[72] In addition, citing federal laws under which resident aliens may be conscripted into the armed forces of the United States[73] and be required to take a loyalty oath,[74] Justice Mosk pointed out that aliens as a class are not incapable of honestly subscribing to the oath in question.[75] The court's argument may be weakened by the dangers inherent in the conscription of aliens who may find themselves

66. *Id.* at 5. The Court ruled that the extensive personal and professional information supplied would provide the state with adequate means to protect its legitimate interest of ascertaining the applicant's qualities or character.

67. *Id.* at 8; *see In re* Stolar, 401 U.S. 23, 30 (1971).

68. 7 Cal. 3d at 296, 496 P.2d at 1269, 101 Cal. Rptr. at 901.

69. *Id.*

70. *Id.* at 297, 496 P.2d at 1270, 101 Cal. Rptr. at 902.

71. *Id.*

72. *Id.*

73. 50 U.S.C. APP. § 454 (1970).

74. 10 U.S.C. § 502 (1970).

75. 7 Cal. 3d at 297, 496 P.2d at 1270, 101 Cal. Rptr. at 902.

with military commitments to another country.[76] Yet the reliance on the First Amendment seems to minimize this weakness.[77]

Additional support for the court's argument is found in at least two criminal cases which indicate the California courts have recognized that aliens may be just as loyal and committed to the laws as citizens.[78] And in *Sei Fujii v. State*[79] the court stated that "ineligibility [to citizenship] does not establish a lack of loyalty or the absence of interest in the welfare of the country."[80] The court also noted that an alien whose American-born children are citizens and who has been in the country for any period of time, paying taxes, serving in the armed forces and contributing generally to the welfare of the country, would have a fundamental interest in being loyal to the country.[81]

Thirdly, the State contended that a lawyer must remain accessible to his clients and subject to the control of the State Bar.[82] The court pointed out the inconsistency of arguing that aliens as a class would be inclined to return to their native country and thus become inaccessible, since in our mobile society citizens would be no less likely to move to another jurisdiction.[83] The court also noted that the possibility that an alien would be involuntary deported or interned should a war break out is mitigated by the unforeseeability of such an occurrence, as well as by

76. Among the foremost [dangers] is the possible imposition of dual (or even multiple) military obligations on the national who has lived abroad. . . .
The importance of these problems and many others that can arise, should not be minimized. Stamberg, *International Law and the Conscription of Aliens*, 27 ALBANY L. REV. 11, 43 (1963).

77. It would seem that conscripted aliens are generally protected by the same constitutional guarantees as are citizens. See text accompanying note 28 *supra*.

78. In People v. Lovato, 258 Cal. App. 2d 290, 293-96, 65 Cal. Rptr. 638, 641-43 (1968), the court of appeal stated:

> [T]o categorically hold that every alien who is intentionally in possession of a concealable weapon, regardless of the reason, is guilty of . . . murder in the second degree if the offense results in a homicide . . . would manifestly lead to unjust and even absurd results. Moreover, to in effect state that a person's citizenship is the controlling factor as to whether a homicide was committed with malice is not only illogical but would constitute an affront to the judiciary which through the years has *constantly striven to find compelling reasons rather than arbitrary distinctions before making rules which result in differing treatment of people. Id.* at 293, 65 Cal. Rptr. at 64 (emphasis added).

In People v. Satchell, 6 Cal. 3d 28, 39, 489 P.2d 1361, 1369, 98 Cal. Rptr. 33, 41 (1971), the California Supreme Court cited with approval the reasoning of *Lovato* regarding distinctions based on alienage. *See* People v. Rappard, 28 Cal. App. 3d 302, 104 Cal. Rptr. 535 (1972), holding that a statute prohibiting the ownership or possession of concealable firearms by aliens was a denial of equal protection of the law.

79. 38 Cal. 2d 718, 242 P.2d 617 (1952).

80. *Id.* at 733, 242 P.2d at 627.

81. *Id.*

82. 7 Cal. 3d at 299, 496 P.2d at 1271, 101 Cal. Rptr. at 903.

83. *Id.*, 496 P.2d at 1272, 101 Cal. Rptr. at 904.

the fact that deportation or internment is not an inevitable consequence.[84] As an example, the court pointed out that during World War II German and Italian nationals were not interned unless suspected of disloyalty to the United States.[85]

The fourth ground urged by the State was that the practice of law is a privilege, not a right.[86] Although many claims for relief have been lost in the "semantic pitfalls"[87] obscuring the discussion of the right-privilege dichotomy in the past, the continuing constitutional significance of the distinction has recently been rejected.[88] The right-privilege distinction was previously utilized to uphold discriminatory classifications based on citizenship. As Justice Cardozo once indicated:

> To disqualify aliens [from public works projects] is discrimination, indeed, but not arbitrary discrimination; for the principle of exclusion is the restriction of the resources of the state to the advancement and profit of the members of the state. . . . The state, in determining what use shall be made of its own moneys, may legitimately consult the welfare of its own citizens, rather than that of aliens. Whatever is a privilege, rather than a right, may be made dependent upon citizenship.[89]

This rationale, however, was destroyed in *Graham v. Richardson*,[90] wherein the United States Supreme Court invalidated, on equal protection grounds, an Arizona statute which required aliens to satisfy a considerable period of residency before they could qualify for welfare assistance, while there was no such requirement for citizens. The Court expressly rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a "right" or a "privilege."[91]

The "privilege" label had also been used as one of the bases for sanctioning a citizenship requirement for admission to the bar.[92] However,

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84. *Id.*

85. *Id.* n.6. However, the court should perhaps have acknowledged the internment of both Japanese aliens and native-born American citizens of Japanese ancestry during World War II. *See* A. BOSWORTH, AMERICA'S CONCENTRATION CAMPS (1968). Yet, the court's basic premise remains reasonably valid, namely, that a lawyer's accessibility to clients would not be reduced simply due to alienage.

86. 7 Cal. 3d at 300, 496 P.2d at 1271-72, 101 Cal. Rptr. at 904-05.

87. *Right to Work, supra* note 14, at 1020.

88. Graham v. Richardson, 403 U.S. 365, 374 (1971). In 1963, the Supreme Court rejected the contention that unemployment compensation benefits are not a "right" but a "privilege." Sherbert v. Verner, 374 U.S. 398, 404 (1963). *See also* Shapiro v. Thompson, 394 U.S. 618, 627 (1969).

89. People v. Crane, 108 N.E. 427, 429-30 (N.Y. 1915).

90. 403 U.S. 365 (1971).

91. *Id.* at 374. The *Graham* Court also invalidated a Pennsylvania statute requiring citizenship for benefits.

92. Large v. State Bar, 218 Cal. 334, 23 P.2d 288 (1933); *In re* Hong Yen Chang,

the discriminatory utility of the label in this area was gradually eroded. In *Schware v. Board of Bar Examiners*,[93] the United States Supreme Court noted:

> Regardless of how the State's grant of permission to engage in this occupation is characterized [as a right or as a privilege], it is sufficient to say that a person cannot be prevented from practicing except for valid reasons.[94]

Eleven years later, the California Supreme Court concluded that it was "impossible . . . to regard admission to the profession as a mere privilege."[95] Finally, in 1971, the United States Supreme Court stated that "[t]he practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character."[96]

As its final rationale, the State argued that a lawyer is an officer of the court and, therefore, should be a citizen.[97] The *Raffaelli* court pointed out, however, that, notwithstanding the lack of a good definition of the term "officer of the court," it is clear that the California attorney is not a public office holder.[98] In effect the court defined the term in relation to the previous discussion: an officer of the court should be able to appreciate the spirit of American institutions, subscribe to an oath to support the Constitution, remain accessible to his clients and subject to the control of the bar, and meet similar responsibilities. This definition, which does not cast the attorney in any official public role, was a rather convenient way to dispose of a weak argument. It was also used by the court to distinguish a recent Connecticut case which had upheld a similar citizenship requirement.[99] The *Raffaelli* court simply noted that in Connecticut a member of the bar is "much more than a lawyer in the usual sense of the word."[100]

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84 Cal. 163, 24 P. 156 (1890); Templar v. State Examiners, 90 N.W. 1058 (Mich. 1902); *In re* Admission to Bar, 84 N.W. 611 (Neb. 1900). *See generally* Annot., 39 A.L.R. 346, 349 (1925).

93. 353 U.S. 232 (1957).

94. *Id.* at 239 n.5, *quoted in* 7 Cal. 3d at 300, 496 P.2d at 1271-72, 101 Cal. Rptr. at 904-05.

95. Hallinan v. Committee of Bar Examiners, 65 Cal. 2d 447, 452 n.3, 421 P.2d 76, 80 n.3, 55 Cal. Rptr. 228, 232 n.3 (1966).

96. Baird v. State Bar, 401 U.S. 1, 8 (1971), *quoted in* 7 Cal. 3d at 300, 496 P.2d at 1272, 101 Cal. Rptr. at 905.

97. 7 Cal. 3d at 300-01, 496 P.2d at 1273, 101 Cal. Rptr. at 905.

98. *Id.* at 301, 496 P.2d at 1273, 101 Cal. Rptr. at 905.

99. *In re* Griffiths, 294 A.2d 281 (Conn. 1972), *rev'd*, 41 U.S.L.W. 5143 (1973) (citing the "thoughtful" *Raffaelli* opinion).

100. 7 Cal. 3d at 303 n.10, 496 P.2d at 1274 n.10, 101 Cal. Rptr. at 906 n.10. A member of the Connecticut bar "is ipso facto a commissioner of the superior court, has statutory power to sign writs, issue subpoenas, take recognizances and administer

The *Raffaelli* decision apparently rests solely upon equal protection grounds.[101] However, several of the cases cited by the court indicate that legislative restrictions which discriminate against aliens can also be attacked on the basis that such legislation encroaches upon the federal government's power to control immigration.[102] Since Congress possesses the exclusive right to regulate immigration and naturalization,[103] state laws which substantially encroach upon the exercise of this power cannot stand. This theory was first articulated in *Truax v. Raich*,[104] wherein the United States Supreme Court struck down an Arizona statute which had restricted the proportion of aliens which could be employed by any employer to twenty percent. The Court reasoned that permitting a state to deny lawfully-admitted aliens the opportunity of earning a livelihood

> would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of acts of Congress, instead of enjoying in a substantial sense . . . the privileges conferred by admission, would be segregated in such of the States as chose to offer hospitality.[105]

Most recently, in *Graham v. Richardson*,[106] the rationale of *Truax*

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oaths, and is entitled to command sheriffs and constables to issue orders 'by authority of the State of Connecticut.'" *Id.*

101. Raffaelli had also contended that the citizenship requirement was invalid as an encroachment on the judicial power to determine standards for bar admission. The State, however, argued that the judicial function is limited to imposing requirements *additional* to those imposed by the legislature. Without deciding the merits of either position, the court pointed out that "it is clear that the Legislature is authorized only to prescribe *reasonable* restrictions within constitutional parameters on the admission to practice." *Id.* at 302 n.9, 496 P.2d at 1274 n.9, 101 Cal. Rptr. at 906 n.9, *citing* Brydonjack v. State Bar, 208 Cal. 439, 281 P. 1018 (1929). In *Brydonjack*, a petition to the California Supreme Court for certification for admission to the bar, the court said:

> Admission to practice is almost without exception conceded everywhere to be the exercise of a judicial function. . . . Admissions to practice have also been held to be the exercise of one of the inherent powers of the court. But the power of the legislature to impose reasonable restrictions upon the practice of the law has been recognized in this state almost from the inception of statehood. *Id.* at 443, 281 P. at 1020 (citations omitted).

See also State *ex rel.* State Bar, 114 N.W.2d 796 (Wis. 1962).

102. *See, e.g.*, Graham v. Richardson, 403 U.S. 365, 377-80 (1971); Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 572-78, 456 P.2d 645, 649-53, 79 Cal. Rptr. 77, 81-85 (1969).

103. U.S. CONST. art. I, § 8, cl. 4.

104. 239 U.S. 33 (1915).

105. *Id.* at 42.

106. 403 U.S. 365 (1971).

was again reiterated. In *Graham* the Court ruled that the Arizona statute[107] requiring fifteen years of United States residency for aliens to be eligible for certain assistance programs was unconstitutional. Noting the existence of a comprehensive federal plan for the regulation of immigration and naturalization, the Court reasoned, *inter alia*, that since Congress had not imposed any burden or restriction on aliens who became indigent after their entry into the United States,[108] state laws which restricted eligibility for welfare benefits merely because of alienage conflicted with overriding national policies.[109]

Similarly, in *Purdy & Fitzpatrick v. State*,[110] an extensive review of immigration statutes was presented as they relate to aliens who seek to enter the American labor market. The California Supreme Court noted that states may deal with matters of special concern which fall within their traditional legislative competence,[111] but concluded that the Labor Code section excluding aliens from public works projects "frustrates the accomplishment and execution" of the Immigration and Nationality Act.[112] Thus, to the extent that the legislative restriction involved in *Raffaelli* is likewise an encroachment upon the federal power, the court could have utilized this theory as well.[113]

107. ARIZ. REV. STAT. § 46-233 (1956) provided, in part:

> No person shall be entitled to general assistance . . . who does not meet and maintain the following requirements:
> 1. Is a citizen of the United States, or has resided in the United States a total of fifteen years.

108. 8 U.S.C. §§ 1182(a)(8), (15) (1970) provide that "aliens who are paupers, professional beggars, or vagrants" or aliens who "are likely at any time to become public charges" shall be excluded from admission into the United States. But the *Graham* Court pointed out:

> Congress has not seen fit to impose any burden or restriction on aliens who become indigent after their entry into the United States. Rather, it has broadly declared: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory . . . to the full and equal benefit of all laws and proceedings for the security of persons and this statute has been held to apply to aliens as well as to citizens. 403 U.S. at 377, *quoting* 42 U.S.C. § 1981 (1970).

109. 403 U.S. at 377.

110. 71 Cal. 2d 566, 572-78, 456 P.2d 645, 649-53, 79 Cal. Rptr. 77, 81-85 (1969).

111. *Id.* at 576, 456 P.2d at 652, 79 Cal. Rptr. at 84.

112. *Id.* The Immigration and Nationality Act of 1952, § 212(a)(14), ch. 477, 66 Stat. 163 (1952), *as amended*, 8 U.S.C. § 1182(a)(14) (1970), provides that all immigrants, excepting immediate relatives of United States citizens or of lawfully admitted resident aliens, who seek to enter the United States for the purpose of performing skilled or unskilled labor shall be excluded unless the Secretary of Labor certifies that "there are not sufficient workers in the United States who are able, willing, qualified, and available . . . to perform such skilled or unskilled labor," and that "the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed." *See also* 8 U.S.C. § 1153(a) (1970).

113. In Sei Fujii v. State, 38 Cal. 2d 718, 720, 242 P.2d 617, 619-22 (1952), the

The *Raffaelli* court's use of the Equal Protection Clause to invalidate the citizenship requirement for admission to the State Bar was a unique, though logical, step. A similar result was reached in Alaska, but the Alaska court sidestepped the equal protection issue and based its decision on the ground that the statute was an unreasonable encroachment on the inherent judicial power to determine standards of admission to the bar.[114]

In view of the strict judicial scrutiny of suspect classifications, the supremacy of federal power regarding immigration, and the favorable procedural standing of an individual attacking one of the suspect classifications, it is not surprising that some legal writers have claimed that all legislative restrictions on occupations directed at aliens should be deemed unconstitutional.[115] Nevertheless, although questions regarding the constitutionality of the citizenship requirement for the practice of law were raised soon after World War II,[116] many legal writers and courts were in agreement as to the validity of the restriction.[117] The decision in *Raffaelli* should provide impetus for attacks upon similar statutes in other states. The decision may also be utilized to support nullification of various other occupational restrictions based on citizenship in California and elsewhere.[118] With the support mustered from decisions of the federal courts annulling on equal protection grounds residence requirements for admission to the bar,[119] persuasive attacks

court, in addition to an equal protection and supremacy argument, relied on the United Nations Charter, pledging the member nations to promote the observance of human rights and fundamental freedoms without distinctions as to race, not as binding authority but as enlightened support. U.N. CHARTER preamble, arts. 1, 55, 56.

114. Application of Park, 484 P.2d 690 (Alaska 1971). The *Raffaelli* court's reference to this theory of attack is presented in note 101 *supra.*

115. KONVITZ, *supra* note 19.

116. *See* Comment, *The Alien and the Constitution,* 20 U. CHI. L. REV. 547, 569 (1953).

117. *See Right to Work, supra* note 14, at 1027 nn. 109-10.

118. On authority of the equal protection rationale in *Purdy,* the California Attorney General has concluded that citizenship cannot be constitutionally required for occupations such as teacher, peace officer, pharmacist, psychologist, psychiatric technician, clinical social worker, private investigator or insurance broker. 7 Cal. 3d at 303, 496 P.2d at 1275, 101 Cal. Rptr. at 907, *citing* 55 OP. CAL. ATTY GEN. 80 (1972); 53 OP. CAL. ATTY GEN. 63 (1970).

119. Potts v. Supreme Court, 332 F. Supp. 1392 (D. Hawaii 1971) (pre-bar examination residence requirements based on qualification for voting); Lipman v. Van Zant, 329 F. Supp. 391 (N.D. Miss. 1971) (one year residency requirement prior to application for admission); Webster v. Wofford, 321 F. Supp. 1259 (N.D. Ga. 1970) (one year residency requirement for admission to the bar when examination already passed). These and similar cases were referred to by the *Raffaelli* court. 7 Cal. 3d at 294, 496 P.2d at 1268, 101 Cal. Rptr. at 900. *But cf.* Suffling v. Bondurant, 339 F. Supp. 257 (1972), *aff'd sub. nom.* Rose v. Bondurant, 409 U.S. 1020 (1972).

on various other restrictions may be mounted. Ultimately, the consequences of striking the citizenship requirements for admission to the bar of all states could lead to greater liberalization and expansion of international law practices. As was noted in 1965:

> In spite of the present restrictions on the admission of aliens and alien attorneys to the practice of law in both Japan and the United States, the very fact that the issue of admission of aliens has been faced is encouraging. . . . [T]he growing awareness of the need for readily available legal advice on problems involving foreign law and the developing civilized maturity in outlook with respect to dealings with peoples of other lands will not encounter the stubborn opposition so normal to a new idea.[120]

Perhaps the ultimate goal is best described by a Biblical passage:

> And if a stranger sojourn with thee in your land, ye shall not vex him.
>
> But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself . . . .[121]

Leonard Siegel

120. Ohira & Stevens, *Alien Lawyers in the United States and Japan—A Comparative Study*, 39 WASH. L. REV. 412, 435 (1964).

121. *Leviticus* 19:33-34, *quoted in Introduction* to KONVITZ, *supra* note 19.