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Article 4

Application of the United Nations' Universal Declaration of Human Rights within the United States

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APPLICATION OF THE UNITED NATIONS' UNIVERSAL DECLARATION OF HUMAN RIGHTS WITHIN THE UNITED STATES

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THE JUDICIAL significance accorded to human rights in the United States, particularly as expressed in the United Nation's Charter, is aptly stated in the concurring opinion of Supreme Court Justice Black in *Oyama v. California*:[1]

> There are additional reasons now why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is that we have recently pledged ourselves to cooperate with the United Nations to 'promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.' How can this nation be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?[2]

Many Americans are prepared to claim, in a chauvinistic spirit, that the basic principles and the spirit of the Universal Declaration of Human Rights are essentially American. In fact, recognition of human rights is as old as man himself. However, the basic documents of the United States—the Declaration of Independence of

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1. 332 U.S. 633 (1947).
2. *Id.* at 649-50.

1776 and the Constitution of the United States with its amendments —are most protective of the rights of the individual human being.

Appraising the status of human rights within the United States might be accomplished by attempting to follow the thirty articles of the Universal Declaration of Human Rights. Such is the approach to be taken in this article.

ARTICLE 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The same basic principle is spelled out in the United States Declaration of Independence as follows:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed . . . .

These statements are in broad terms. In 1776 these ideals were not wholly accepted or practiced in the United States. In fact, at the time the rights were envisioned, they were intended for the sole benefit of white male property owners. The first ten amendments to the United States Constitution were designed to add substance to the concepts of individual liberties. But it took the American Civil War to eliminate slavery and to implement the equality proclaimed in article I of the Universal Declaration.

The adoption of the thirteenth, fourteenth and fifteenth amendments to the Constitution after the Civil War carried forward the recognition of individual rights in a wide variety of specific areas such as access to public places, education, employment, housing and voting.

ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind,

such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The ideals expressed in this article are the basic ideals of the United States. The emphasis is upon the equality of all persons, without any type of discrimination. But the full attainment of these ideals has not been completely achieved in the United States.

For example, it was not until 1920 that political discrimination against women was officially prohibited through the adoption of the nineteenth amendment to the Constitution. It can be asserted that, in 1970, the equality of all Americans, regardless of ancestry, religion, sex, color, economic status or political beliefs, is protected by law in matters deemed to be public. However, the application of the law to every conceivable set of facts has not yet been tested, nor has the extent to which these basic principles are applicable to private action been fully explored. The discussion of subsequent articles of the Universal Declaration will develop more fully the status of these rights within the United States.

ARTICLE 3

Everyone has the right to life, liberty and security of person.

The American Declaration of Independence contains the phrase "life, liberty, and the pursuit of happiness." Within the United States Constitution and the acts of Congress there are a wide variety of expressions supporting individual rights and personal security. The fifth amendment to the Constitution provides that no one shall "be deprived of life, liberty, or property, without due process of law." This language is repeated in the fourteenth amendment. The fourth amendment protects "the right to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures."

It further provides against the issue of warrants except "upon probable cause." The Universal Declaration also covers these rights under articles 9 and 12.

In 1886, the Supreme Court in *Boyd v. United States*[3] considered a conviction in a federal court based on evidence claimed to have been unlawfully obtained.

> It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property. . . . Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony, or of his private papers to be used as evidence to convict him of crime, or to forfeit his goods, is within the condemnation . . . [of those amendments].[4]

The Court notes that "constitutional provisions for the security of person and property should be liberally construed. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."[5] Seventy years later, the Court, in *Mapp v. Ohio*,[6] applied the doctrine to similarly obtained evidence in a state court criminal trial.

ARTICLE 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

When the United States Constitution was being drafted in 1787, slavery was a recognized institution. Its existence is acknowledged in the Constitution under article I section 9 which prohibited the newly created Congress from barring the importation of slaves until 1808. That year the Congress enacted a statute prohibiting further importation of slaves. In the meantime under article I section 2 of the Constitution, three-fifths of the slaves in each state were to be counted in apportioning representatives and direct taxes.

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3. 116 U.S. 616 (1886).

4. *Id.* at 630.

5. *Supra* note 3, at 63.

6. 367 U.S. 643 (1961). *But see* Coolidge v. New Hampshire, 403 U.S. 443, 490 (1971) where Justice Harlan in a concurring opinion proposes the reversal of Mapp v. Ohio.

The issue of slavery was a divisive one from the very beginning of this nation's history. It was not resolved until the Civil War, which resulted in the victory of the North or Union States over the Confederate or Southern States. The immediate result was the adoption in 1865 of the thirteenth amendment which provides:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

Thereafter the Congress adopted a series of acts beginning with the Civil Rights Act of 1866 and the Civil Rights Act of 1875. Although the Act of 1875 was declared unconstitutional in 1883,[7] the earlier Act of 1866 was the basis of a decision a century later, holding that the prohibition of discrimination in housing applied not only against state action but against private action as well.[8] The authority of Congress to adopt the Act of 1866 rests on the thirteenth amendment.

Two other direct results of the Civil War were the adoption of the fourteenth amendment in 1868, frequently referred to as the Equal Protection Amendment, and the fifteenth amendment in 1870, which prohibited the denial of voting rights because of race, color or previous condition of servitude. The extensive effect of these amendments, particularly the fourteenth, is referred to in subsequent comments on other articles of the Declaration of Human Rights.

In 1929 the United States entered into a treaty, the Convention for the Abolition of the Slave Trade, originally adopted by the League of Nations in 1926. In 1967 the United States ratified a protocol to that treaty which is known as the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. This latter treaty was originally adopted by the United Nations in 1956. There is special significance in the approval of this treaty by the Senate because it was the first of the United Nations human rights treaties to which the Senate had given its advice and consent.

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7. Civil Rights Cases, 109 U.S. 3 (1883).
8. Jones v. Mayer, 392 U.S. 409 (1968).

The goals of article 4 of the Declaration of Human Rights have been achieved within the United States.

ARTICLE 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The eighth amendment to the United States Constitution provides that no "cruel and unusual punishments" shall be inflicted. Although the wording in the Declaration of Human Rights may sound more inclusive, the phrasing in the Constitution has been interpreted quite broadly by the Supreme Court. In *Trop v. Dulles*,[9] Chief Justice Warren expressed the position of the Court:

> The exact scope of the constitutional phrase 'cruel and unusual' has not been detailed by this Court. But the basic policy reflected in these words is firmly established in the Anglo-American tradition of criminal justice. The phrase in our Constitution was taken directly from the English Declaration of Rights of 1688, and the principle it represents can be traced back to the Magna Carta. The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards. Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect. This Court has had little occasion to give precise content to the Eighth Amendment, and, in an enlightened democracy such as ours, this is not surprising. But when the Court was confronted with a punishment of 12 years in irons at hard and painful labor imposed for the crime of falsifying public records, it did not hesitate to declare that the penalty was cruel in its excessiveness and unusual in its character. *Weems v. United States*, 217 U.S. 349. The Court recognized in that case that the words of the Amendment are not precise, and that their scope is not static. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.[10]

Although the Bibilical commandment demands "Thou Shalt Not Kill," the fact is that throughout history man has made death the penalty for a variety of crimes. The trend, however, in this stage of civilization, is to abolish or reduce the number of crimes for which there can be capital punishment. In 1963, in *Rudolph v.*

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9. 356 U.S. 88 (1958).

10. *Id.* at 99. *See* People v. Anderson, 40 U.S.L.W. 2552 (Feb. 18, 1972), where the California Supreme Court struck down capital punishment as violative of the state constitution's prohibition of cruel and unusual punishment.

Alabama[11] three justices of the Supreme Court, in their dissenting opinion, raised the question of whether the death penalty is constitutionally permissible for a "rapist who has neither taken nor endangered human life."[12] A footnote to that opinion refers to a United Nations survey indicating that the vast majority of reporting nations no longer permitted the death penalty for rape. Similarly, most states within the United States have banned the death penalty for rape. As of 1968, thirteen states within the United States had either entirely abolished or severely limited the use of capital punishment. Since 1967, not a single person has been executed in the United States.

The popular revulsion against killing, even that which is legally permissible, is bound to have its effect on the legislative bodies, if not on the courts. At one time, other forms of punishment, such as whipping, stockades, etc. were considered commonplace. Today they would be considered as beyond the pale in the United States. In Justice Warren's words, "[t]he Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[12a]

ARTICLE 6

Everyone has the right to recognition everywhere as a person before the law.

Whatever doubts that may have existed prior to the Civil War regarding the right of everyone to be recognized before the law were dispelled by the fourteenth amendment adopted in 1868. Prior thereto, the fifth amendment had provided that no person shall "be deprived of life, liberty, or property, without due process of law." This presumably applies only to the federal government. The fourteenth amendment extended this provision beyond the federal government to the several states: "nor shall any State deprive any person of life, liberty, or property, without due process of law." The amendment then states the equal protection provision as follows: "nor deny to any person within its jurisdiction the equal protection of laws."

11. 375 U.S. 889 (1963).
12. *Id.*
12a. 356 U.S. 88, 99 (1958).

The effect of the fourteenth amendment is referred to elsewhere in this paper. But the reference to "any person" in this last quotation emphasizes the right to recognition of everyone before the law in the United States.

ARTICLE 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The series of Civil Rights Acts adopted by the Congress, beginning with the enactment of the Civil Rights Act of 1957 which established the Commission on Civil Rights, are noteworthy in connection with article 7.

The 1960 Act was structured to include protection of voting rights; the 1962 Congress adopted a constitutional amendment outlawing the poll tax (thereafter becoming the twenty-fourth amendment); a 1964 Act provided the basis for desegregation of public elementary and secondary schools; the 1965 Act strengthened voting rights; and the 1968 Act prohibited racial discrimination in housing.

The Supreme Court, after the negative decision in *Plessy v. Ferguson*,[13] has asserted and reasserted its recognition of equality on almost every basis. In the *Plessy* case, the Court held a statute which required separation of races was free of constitutional defect; but it also recognized that the fourteenth amendment required equality. This became known as the "separate but equal" doctrine. Thereafter, in a number of decisions, the Court more broadly interpreted the fourteenth amendment. These included such cases as *Missouri v. Canada*[14] and *Sweatt v. Painter*.[15]

In 1954, in *Brown v. Board of Education*,[16] the Court finally rejected the "separate but equal" doctrine of the *Plessy* case. As the Court said: "[w]e conclude that in the field of public edu-

13. 163 U.S. 537 (1896).
14. 305 U.S. 337 (1938).
15. 339 U.S. 629 (1950).
16. 347 U.S. 483 (1954).

cation the doctrine of 'separate but equal' has no place. Separate facilities are inherently unequal."[17]

A year later the Court, in directing compliance with its decision, called for local solutions "with all deliberate speed."[18] In 1969, in *Alexander v. Holmes County*,[19] the Court directed forthwith compliance with a desegregation order because "all deliberate speed is no longer constitutionally permissible."[20]

Although the fourteenth amendment refers to equal protection against government action, it is interesting to note the small difference between government action and private action. In *United States v. Guest*[21] the Court delineated its concept of "government action" in stating:

> [i]n a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection clause even though the participation of the State was peripheral or its action was only one of several cooperative forces leading to the constitutional violation.[22]

It should be noted that the last provision of article 7 refers to "incitement to such discrimination." This area of free speech is one on which Americans are quite sensitive. The subject will be covered under article 19.

ARTICLE 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The court of final appeal in the United States is the Supreme Court. There is an extensive system of state and local courts plus a wide variety of administrative tribunals at state and national levels. The composition of the federal court system and the general provisions governing its organization are set out in the United States

17. *Id.* at 495.

18. Brown v. Bd. of Education, 349 U.S. 295 (1955).

19. 396 U.S. 19 (1969). *See also* Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), where the Supreme Court advanced equal protection in the public schools by enumerating guidelines, including busing, to end dual school systems.

20. *Id.* at 20.

21. 383 U.S. 745 (1966).

22. *Id.* at 755.

Code.[23] One section[24] accords jurisdiction to the United States District Courts of civil matters where the amount involved exceeds $10,000 and the action "arises under the Constitution, laws, or treaties of the United States."

The courts are open to all on an equal basis.

Among the privileges and immunities of citizenship is included the right of access to courts for the purpose of bringing and maintaining actions. This privilege includes the right to employ the usual remedies for the enforcement of personal rights in actions of every kind—a right which cannot be abrogated or even suspended. It has been said that the right to sue and defend in the courts is one of the highest and most essential privileges of citizenship and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens, but not to a greater extent. Equality of treatment in this respect is not left to depend upon the comity between the states, but is guaranteed by the Federal Constitution.[25]

In *Lawrence v. Mississippi*,[26] the Supreme Court stated the rule:

[b]ut the Constitution which guarantees rights and immunities to the citizens, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked.[27]

ARTICLE 9

No one shall be subjected to arbitrary arrest, detention or exile.

The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons" and prohibits "unreasonable searches and seizures." It bars the issuance of warrants except "upon probable cause, supported by oath and affirmation." The fifth amendment protects every person from being "held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in land or naval forces, or in the militia, when in actual service in time of War or public danger."

The concept of exile as used in certain nations is unknown in the United States. There is no reference to it in either the United States Constitution or the Criminal Code. Questions relating to arbitrary arrest and detention, however, have given rise to numerous

23. Judiciary and Judicial Procedure, 28 U.S.C. (1970).
24. 28 U.S.C. § 1331(a) (1970).
25. 16 Am. Jur. 2d Con. Law § 481 (1964).
26. 286 U.S. 276 (1931).
27. *Id.* at 282.

court cases. In 1891[28] the Supreme Court stated that no right is more revered than the "right of every individual to the possession and control of his own person, free from all restraint or interference, unless by clear and unquestionable authority of law."[29]

In the case of *Mallory v. United States*,[30] an unreasonable detention was held to require a reversal of a criminal conviction. The Court held that a suspect must be brought before a committing magistrate "without unnecessary delay" for advice about the suspect's legal rights and a determination of whether probable cause for the arrest exists.

In *Miranda v. Arizona*,[31] the Court spelled out standards which were required to be observed on the suspect's behalf during police custodial detention. The suspect is entitled to be clearly advised that he can remain silent, that what he says may be used against him, and that he has a right to have counsel present, including one appointed for him if he cannot afford counsel.

ARTICLE 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The philosophy which requires the fair and impartial trial, as contemplated in article 10, is deeply rooted in American tradition. This is particularly evident in criminal cases. The Bill of Rights of the United States Constitution spells out these protections in broad terms: the fifth amendment on self-incrimination; the sixth amendment on a speedy and public trial by an impartial jury and the right to counsel; the seventh amendment on jury trials for common law suits over twenty dollars; and the eighth amendment on excessive bail or fines or the infliction of cruel and unusual punishments.

28. Union Pacific v. Botsford, 141 U.S. 250 (1891).

29. *Id.* at 251.

30. 354 U.S. 449 (1957).

31. 384 U.S. 436 (1966). *But see* Harris v. New York, 401 U.S. 222 (1971), where the Court held that a statement inadmissible against a defendant in the prosecution's case in chief because of the lack of the procedural safeguards required by *Miranda v. Arizona*, may be used for impeachment purposes to attack the credibility of defendant's trial testimony.

An accused is presumed innocent until proven guilty "beyond a reasonable doubt."[32] Protection against self-incrimination has been broadly interpreted.[33] The right to a speedy trial "is an important safeguard."[34] Right to counsel exists at every adversary stage of the criminal process.[35] The impartiality of the court is basic, as is that of the jury. The Supreme Court reversed a conviction of Negroes where it appeared that Negroes has been systematically excluded from the jury.[36] A recent federal statute, The Jury Selection and Service Act of 1968,[37] prescribes the procedure to be followed in selecting jurors and forbids any racial or religious discrimination.

ARTICLE 11

Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

The presumption of innocence may be deemed a principle of justice "so rooted in the traditions and conscience of our people as to be ranked as fundamental."[38] The Supreme Court used this phrase in discussing certain related presumptions. It is equally applicable to the presumption of innocence. Among the guarantees "necessary for his defense" is the right to counsel. The right to counsel is specifically provided for in the sixth amendment[39] and is discussed in another article. The prohibition against conviction of any penal

32. Coffin v. United States, 156 U.S. 432 (1895).

33. Emspak v. United States, 349 U.S. 190 (1955).

34. United States v. Ewell, 383 U.S. 116 (1966).

35. Gideon v. Wainwright, 372 U.S. 335 (1963).

36. Shepherd v. Florida, 341 U.S. 50 (1951).

37. 28 U.S.C. § 1861 (1970).

38. Speirer v. Randall, 357 U.S. 513 (1958).

39. Gideon v. Wainwright, *supra* note 35 and Miranda v. Arizona, *supra* note 31.

offense which was not such an offense when committed is imbedded in the Constitution itself and applies to both federal and state governments. Article I, section 9 provides that "[n]o . . . *ex post facto* law shall be passed," and section 10 dictates that "[n]o State shall . . . pass any Bill of Attainder [or] *ex post facto* law." Under Supreme Court decisions, an *ex post facto* law is one which not only makes something criminal which was not so when the act occurred, but also one which increases the punishment. The Court said in *Beazell v. Ohio*:[40]

> [i]t is settled, by decision of this Court so well known that the citation may be dispensed with, that any statute which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed, is prohibited as *ex post facto*.[41]

ARTICLE 12

> *No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

The first amendment's bar of Congress from abridging the freedom of speech, assembly and religion; the fourth amendment right of the people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures;" and the fifth amendment protection against compelling a person to be a witness against himself, indicate the sharp limits placed on the government to protect the individual's liberties against the state. But the scientific advances of the twentieth century have made possible intrusions into private lives that were hardly conceivable when the Bill of Rights was adopted. The telephone tap, the hidden or invading camera, the sophisticated eavesdropping devices and other technological advances in surveillance have forced a re-evaluation of the extent to which privacy is protected. At this writing, neither the courts nor the Congress have determined how far they can go in protecting

40. 269 U.S. 167 (1925).
41. *Id.* at 169.

the traditional right of privacy as against the need to protect the nation against organized crime and subversive activities.

In 1968 the Congress enacted a federal law which subjected any unauthorized person to a possible $10,000 fine and five year imprisonment for tapping wire or oral communications. Certain public officials are permitted to eavesdrop after obtaining prior court authority under the Omnibus Crime Control and Safe Streets Act.[42] The Supreme Court had ruled, prior to the enactment of this Act, that electronic devices could be used only when the requirements of the fourth amendment as to a reasonable search and seizure had been met.[43] The constitutionality of the 1968 Crime Control Act, or of parts of it, will be tested in specific cases which are bound to arise under it in the next decade. Individual privacy, which has been so long honored in the United States, may not continue to receive the same protection hereafter. The extent to which the United States will adhere to the guarantees of article 12 of the Universal Declaration of Human Rights is impossible to predict at this point.

ARTICLE 13

(1) *Everyone has the right to freedom of movement and residence within the borders of each state.*

(2) *Everyone has the right to leave the country, including his own, and return to his country.*

The freedom of movement of American citizens within the United States is traditional and supported by Supreme Court decisions. In *Kent v. Dulles*[44] the Court said:

> [t]he right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.[45]

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42. Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3701 (1970).

43. Berger v. New York, 388 U.S. 41 (1967). The use of electronic devices within the scope of the fourth amendment has recently been expanded. *See* United States v. White, 401 U.S. 745 (1971).

44. 357 U.S. 116 (1958).

45. *Id.* at 125-26.

Whether the moves are of a temporary nature, such as for vacation or for educational purposes, or of a permanent nature for health or economic reasons, the right of mobility is well established.

The right to residence in each state is stated by Justice Jackson in his concurring opinion in *Edwards v. California*:[46]

> [i]t is a privilege of citizenship of the United States, protected from state abridgement, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing. . . .[47]

It should be noted that when a citizen moves from one state to another some procedural steps may be required to establish the new residency. Outside the areas of harmful conduct, Americans are generally free to go where they wish and live in whatever part of the country they desire, as contemplated by article 13(1).

The basic rule regarding leaving and returning to one's country, as indicated in *Kent v. Dulles*,[48] is repeated in *United States v. Laub*:[49] "the right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law."[50] No legislation specifically prohibits the departure from or return to the United States by an American citizen. However, passport laws exist.[51] It is to be noted that "it is the exception rather than the rule in our history to require that citizens engaged in foreign travel should have a passport."[52] To illustrate the point, in *Worthy v. United States*,[53] the circuit court of appeals held unconstitutional a passport statute which made it a crime for a United States citizen to enter the country without a valid passport.

ARTICLE 14

(1) *Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

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46. 314 U.S. 160 (1941).
47. *Id.* at 183.
48. *Supra* note 44.
49. 385 U.S. 475 (1967); *see* Aptheker v. Sec. of State, 378 U.S. 500 (1964).
50. *Id.* at 481.
51. 22 U.S.C. § 211(a) (1970).
52. United States v. Laub, *supra* n. 49, n. 5 at 481.
53. 328 F.2d 386 (5th Cir., 1964).

(2) *This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

Until 1875 the United States had virtually no federal laws restricting the admission of aliens. On the contrary, statutes were adopted to encourage immigration. Some states at one time did attempt to regulate the entry of aliens, primarily on health and character tests. But these were found to be unconstitutional as attempts to regulate foreign commerce.[54] Since 1875, however, the Congress has enacted various restrictive measures dealing with immigration. The power of the Congress to impose such restrictions as to the Chinese was upheld by the Supreme Court in 1889 in The Chinese Exclusion Case.[55] From this point Congress enacted other limiting statutes, starting with the Immigration Act of 1917.[56] Although Congress imposed a literacy requirement, refugees from religious persecution were exempted from this test.

The Immigration and Nationality Act of 1952[57] codified previous immigration laws and continued quota restrictions, but it eliminated previous racial restrictions and expanded the opportunities for discretionary relief to alleviate hardships. In 1965 the Act was amended[58] to eliminate the national origin quota system and to substitute a non-discriminatory method for selecting immigrants. Over the years there have been displaced persons and refugee acts of special application to those seeking asylum from, among others, Hungary and Cuba.

In 1968 the United States ratified a United Nations Protocol Relating to the Status of Refugees. The Protocol bound the United States to the earlier United Nations Convention on Refugees. It defines refugees "as persons who are outside of and unwilling to return to their respective countries of nationality or habitual residence because of well-founded fear of being persecuted for reasons of

54. Smith v. Turner, 48 U.S. (7 How) 282 (1849).
55. 130 U.S. 581 (1889).
56. 39 Stat. 874 (1917). (8 U.S.C. § 173 (1970).
57. 66 Stat. 163 (1952). (8 U.S.C. § 1101 (1970).
58. 8 U.S.C. § 1101 (1964). (8 U.S.C. § 1101 (1970).

race, religion, nationality, membership of a particular social group or political opinion."[59] It also incorporates provisions dealing with the freedom of religion for refugees, the right of free access to courts of law, the right to hold gainful employment, to acquire property, to move freely and to participate in the benefits of public education, relief, social security, unemployment compensation and other programs.[60]

As to the right of asylum arising from non-political crimes, the United States has entered into extradition treaties with approximately eighty nations. In each instance political offenses or related acts are exempt from the United States obligation to extradite.

The right of the Congress to prescribe terms and conditions upon which an alien may enter or remain in the country has been sustained. In *Harisiades v. Shaughnessy*,[61] the Court said: "The Government's power to terminate its hospitality (to aliens) has been asserted and sustained by this Court since the question first arose."[62]

ARTICLE 15

(1) *Everyone has a right to a nationality.*

(2) *No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

The United States Constitution gives power to the Congress "[t]o establish an uniform Rule of Naturalization."[63] The fourteenth amendment, section 1 provides that, "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." In 1952 the Congress revised and recodified the statutes of naturalization.[64] Generally speaking, one born in the United States, not to American parents, can acquire citizenship under the naturalization provisions of the statute.

There appears no basis upon which a citizen can be deprived

59. U.N. Doc. A/Conf. 32/4 at 70 (1967).

60. *See* REPORT OF THE U.S. SENATE COMMITTEE ON FOREIGN RELATIONS, 90th Cong., 2d Sess. (1968).

61. 342 U.S. 580 (1952).

62. *Id.* at 587.

63. U.S. CONST. art. 1, § 8.

64. 8 U.S.C. § 1401 (1970).

of his citizenship except by his voluntary act. In *Afroyim v. Rusk*,[65] the Court said:

[c]itizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.[66]

ARTICLE 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

In 1967 the United States ratified the United Nations Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery. By article I, thereof, the United States undertook to bring about progressively and expeditiously the complete abolition of certain practices, including:

[a]ny institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person.[67]

65. 387 U.S. 253 (1967).

66. *Id.* at 268.

67. Message of President Kennedy to the U.S. Senate, July 22, 1963.

The foregoing recognizes the American tradition as to the right to select one's spouse free of legal limitations. The philosophy is spelled out on a constitutional basis in *Loving v. Virginia.*[68] This case dealt with miscegenation, the marriage between members of different races. The Court said:

> [t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. . . . Under our constitution, the freedom to marry, or not to marry, a person of another race resides with the individual and cannot be infringed by the State.[69]

The protection to be accorded to the family by the State is indicated in *Griswold v. Connecticut:*[70]

> [m]arriage is a coming together for better or worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.[71]

ARTICLE 17

(1) *Everyone has the right to own property alone as well as in association with others.*

(2) *No one shall be arbitrarily deprived of his property.*

The fifth amendment provides that no person shall "be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Although originally the fifth amendment was held to apply only to the federal government, the fourteenth amendment extended this right as against the states: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

Although the right to private ownership of property is unquestioned in the United States, certain limitations on the absolute use thereof do exist, including those as to public accommodation facilities and residential real estate. The Congress has enacted laws seeking to eliminate discrimination against minority groups in the use and enjoyment of public accommodations, public facilities and housing.

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68. 388 U.S. 1 (1967).
69. *Id.* at 12.
70. 381 U.S. 479 (1965).
71. *Id.* at 486.

In 1968 the Congress enacted the latest of a recent series of Civil Rights Acts.[72] Title VIII of the Act prohibits discrimination on the basis of race, color, religion or national origin in housing as provided in the Act. On the judicial side, in the case of *Jones v. Mayer*,[73] the Supreme Court held that the Civil Rights Act of 1966 barred racial discrimination in private as well as in public accommodations. This case and similar ones are discussed elsewhere in this article.

Eminent domain, the power of government to appropriate private property for public use, is fundamental; but it is limited by the constitutional requirements of due process and just compensation.[74] Over the years, statutory limitations on the exercise of absolute freedom over the use of private property have been created in response to significant social and economic developments. Although not as apparent as the limitations on racial discrimination in the use of real estate, the use of corporate private property, as represented by shares of stock, has been limited by such legislation as the Securities Acts. Similarly, anti-trust legislation has sought to avoid undue concentration of economic power which threatened to foreclose competition; and, thereunder, the sale of the business of one private corporation to another was prevented.[75]

ARTICLE 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The right of freedom of thought, conscience and religion is deeply imbedded in American tradition. As to religion, the first amendment

72. 18 U.S.C. § 241 (1970).

73. 392 U.S. 409 (1968).

74. For a thorough discussion of eminent domain, see 26 AM. JUR. 2d *Eminent Domain* § 25-170 (1966).

75. United States v. Pabst Brewing Co., 384 U.S. 546 (1966).

to the United States Constitution provides that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The first amendment was a limitation upon federal action. In 1947,[76] the fourteenth amendment was held to equally limit the States. As the Court said later in *McCollum v. Board of Education*,[77] "the First Amendment has erected a wall between church and State which must be kept high and impregnable."[78] The high wall rule was held in the *Everson* case,[79] however, not to prohibit use of government funds to reimburse parents for the cost of transporting children to sectarian schools.

As to the prohibition of government from interfering with the free exercise of religion, there are a variety of cases supporting the protection. *West Virginia v. Barnett*[80] sustained the right to refuse to salute the United States' flag if such a salute was deemed contrary to one's religious beliefs. *Torcaso v. Watkins*[81] held that the government could not require a person to express a belief in God as a prerequisite to holding public office.

The current issue in the United States is whether an individual can refuse to participate in war on grounds that to compel him to do so would violate his "free exercise" of religion as guaranteed by the first amendment. A recent case supported a broad interpretation of the test that the religious belief "in relation to a Supreme Being" necessary to support exemption from certain war services embraces all forms of religious beliefs, but not those beliefs which are essentially political, sociological or philosophical.[82]

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76. *See* Everson v. Board of Education, 330 U.S. 1 (1947).

77. 333 U.S. 203 (1947).

78. *Id.* at 212. *See* Lemon v. Kurtzman and Early v. Di Censo, 403 U.S. 602 (1971), where the Supreme Court found aid to parochial schools in the form of salary supplements for teachers to be unconstitutional.

79. *Supra* note 76.

80. 319 U.S. 624 (1943).

81. 367 U.S. 488 (1967).

82. United States v. Seeger, 380 U.S. 163 (1965). *See*, Gillette v. United States, 401 U.S. 437 (1971), where denial of conscientious objector status to one opposed to a particular war rather than all war was held not violative of the free exercise clause.

ARTICLE 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Although article 19 is phrased in different terms than others previously discussed in this article, the applicability of the first amendment is apparent. As in the other instances, the prohibitions of the first amendment are also applicable to the States under the fourteenth amendment.

As traditional as free speech and free press are in the United States, these rights do not deny protection to other recognized interests of citizens or the state. These limitations on free speech and free press were thus expressed by the Supreme Court in *Chaplinsky v. New Hampshire*:[83]

[i]t is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words—those by which by their very utterance inflict injury or tend to incite an immediate breach of peace.[84]

The law of libel and slander will support a civil action for infringement of protected interests such as personal reputation. But there is much greater latitude accorded to the publishing of material regarding the reputation of public officials and public figures. In *New York Times v. Sullivan*,[85] the Court applied the rule that a public official could not recover for a "defamatory falsehood relating to his official conduct unless it is proven that it was made with actual malice or with reckless disregard of whether it was false or not."[86] The decision was based on the view that the first amendment embodies "a profound commitment to the principle that debate on public issues should be uninhibited, robust and wide-

83. 315 U.S. 568 (1942). *See* New York Times Co. v. United States, and United States v. Washington Post, 403 U.S. 713 (1971), wherein the Supreme Court upheld the right to publish the "Pentagon Papers" despite the government's argument that their publication would jeopardize national security.

84. *Id.* at 571-72.

85. 376 U.S. 254 (1964).

86. *Id.* at 279-80.

open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials."[87]

There are occasions, however, in which the public interest may outweigh the claimed right of free speech by the individual. Thus a city ordinance prohibiting the use on city streets of sound trucks emitting loud and raucous noises does not deny constitutional freedom of speech.[88] Likewise the destruction of draft registration certificates is not protected as symbolic speech.[89]

With regard to incitement to commit unlawful acts, the Court has evolved the "clear and present danger" rule. The Court said in *Schenck v. United States*:[90]

[t]he question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.[91]

In *Yates v. United States*,[92] the distinction is emphasized as between advocacy of ideas and advocacy to take unlawful action, even though the ideas may ultimately lead to unlawful action. With respect to pornography, the Court has said in *Roth v. United States*[93] that:

[a]lthough all ideas having even the slightest redeeming social value—unorthodox ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, implicit in the history of the First Amendment is the rejection of speech that is utterly without redeeming social importance.[94]

And in 1969 the Court re-emphasized the necessity of distinguishing between advocacy of ideas and preparation for violent action when it stated:

the mere advocacy teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action. A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from government control (cases cited).[95]

87. *Id.* at 270.
88. Kovacs v. Cooper, 336 U.S. 77 (1948).
89. United States v. O'Brien, 391 U.S. 367 (1968).
90. 249 U.S. 47 (1919).
91. *Id.* at 52.
92. 354 U.S. 298 (1957).
93. 354 U.S. 476 (1957).
94. *Id.* at 484.
95. Brandenburg v. Ohio, 395 U.S. 444, 448 (1969).

ARTICLE 20

(1) *Everyone has the right to freedom of peaceful assembly and association.*

(2) *No one may be compelled to belong to an association.*

This freedom, "the right of the people to assemble peaceably," is set out in the first amendment to the United States Constitution. The freedoms secured by the first amendment have been held to occupy a preferred place. "That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions."[96]

The right to association was upheld by the Supreme Court in *N.A.A.C.P. v. Alabama,*[97] where a statute which compelled disclosure of membership in an organization, which espoused dissident beliefs, was held unconstitutional. In *N.A.A.C.P. v. Button,*[98] the Court sustained the right of an organization and its members to assist persons seeking legal redress for infringement of constitutional rights. In *Fefbrandt v. Russell,*[99] a required state loyalty oath for membership in an organization whose purpose was to overthrow the government was held to violate freedom of association.

ARTICLE 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

96. Thomas v. Collins, 323 U.S. 516, 530 (1945).
97. 357 U.S. 449 (1958).
98. 371 U.S. 415 (1962).
99. 384 U.S. 11 (1966).

The principles announced in this article have been discussed under other articles, particularly article 7. The applicable phrase in the Declaration of Independence is that governments derive "their just powers from the consent of the governed." The right to vote and thereby take part in the governing of one's country is basic under our Constitution. The Supreme Court said in *Reynolds v. Sims:*[100] "[i]t has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote. . . . The right to vote freely for the candidate of one's choice is of the essence of a democratic society. . . ."[101] In *Gray v. Sanders,*[102] the Court expressed its feeling succinctly when it said:

> [t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.[103]

Article I of the Constitution provides for a national legislature elected by popular vote. Under article II the President and Vice-President are chosen by electors from each State, who in turn are selected in a manner prescribed by the legislature of each State. By the twenty-second amendment the President may not be elected to more than two terms. As of this writing, there are several proposed constitutional amendments before the Congress for electing the President and Vice-President by direct popular vote.

The law once required an age of twenty-one to vote, but recently Congress passed an act reducing the age to eighteen. The Constitution fixes certain minimum ages to qualify for President, a senator, or a representative. Certain requirements of residency and citizenship are also imposed on these offices. But no restriction can be imposed because of sex, race, religion or economic status.

ARTICLE 22

Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance

100. 377 U.S. 533 (1964).
101. *Id.* at 544-45.
102. 372 U.S. 368 (1963).
103. *Id.* at 381.

with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.

The Constitution of the United States in its opening clause states: "We the People of the United States in order to promote the General Welfare. . . ," and in article II section 8 Congress is specifically empowered to provide for the "General Welfare."

Prior to 1932, the usual practice was to leave to local communities the care of the needy. The economic depression of the early 1930's brought a change in this attitude, resulting in the adoption of the Social Security Act of 1935. This Act established the present social security program as well as other programs to help provide economic security for all Americans. The Act was later held constitutional in *Helvering v. Davis*.[104] Congress, expanding this program over the years, has firmly established it as the basic method in the United States of assuring income to individuals, families and dependents when the breadwinner retires, becomes disabled, or dies. It was estimated that in 1969, one out of every eight Americans received some form of monthly cash benefits.

In addition to the cash benefits, the program has made substantial contributions under the medical care program, Medicare. There are also large benefits paid to veterans of the Armed Forces and their immediate families, covering compensation and pension benefits, as well as benefits for medical attention and hospitalization. Although about ninety-two percent of the people reaching age sixty-five are eligible for certain social security benefits, there are still small groups, such as itinerant agricultural workers, who are without full protection.

Institutions participating in the Medicare program must meet the requirements of title VI of the Civil Rights Act of 1964. This means that service in these hospitals and related health facilities must be made available to all patients on an equal basis, regardless of race, religion or color. The Social Security Administration has a number of active programs and projects under its direction aimed at improving the protection afforded human rights.

104. 301 U.S. 619 (1937).

ARTICLE 23

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

(2) Everyone without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

The concern in the United States over employment and the conditions of labor has grown over the years as the nation has developed into an industrialized society. The interest in the care and education of children began with the formulation of labor laws. In 1913, on the national level, a separate cabinet-level Department of Labor was authorized.[105] By 1923, 17 states had adopted minimum wage legislation. But in that year the Supreme Court declared the District of Columbia minimum wage law for women unconstitutional.[106] A few years earlier the Court invalidated a federal law regulating minimum age for those who worked on goods shipped in interstate commerce.[107]

A series of federal acts, beginning with the Railway Labor Act of 1926,[108] reflected the developing concern for job security and improved working conditions. In 1932, Congress enacted the Norris-LaGuardia Anti-Injunction Act[109] restricting federal courts from issuing injunctions in labor disputes. Under the National Labor Relations Act of 1935,[110] employees were guaranteed organizational and bargaining rights. The constitutionality of this Act was upheld by the Supreme Court in *Polish National Alliance v. N.L.R.B.*[111]

105. 29 U.S.C. § 551 (1970).

106. Adkins v. Children's Hospital, 261 U.S. 525 (1923).

107. Hammer v. Dagenhard, 247 U.S. 251 (1918).

108. 45 U.S.C. § 151 (1964).

109. 29 U.S.C. § 101 (1970).

110. 29 U.S.C. § 151 (1970).

111. 322 U.S. 643 (1944). *See also* N.L.R.B. v. Allis Chalmers, 388 U.S. 175 (1967).

Practices by unions and employers with regard to these rights were restricted in the Federal Labor Management Relations Act of 1947.[112]

The Full Employment Act of 1946[113] declares that government policy should foster and promote employment opportunities, including self-employment, and maximum employment. Several other statutes enacted during the 1960's were directed toward the goal of affording all citizens the opportunity of participating in our economic life.

The right to just and favorable remuneration and decent working conditions is protected by various laws relating to minimum wage rates, safety, health and hours of work. The basic wage and hour law, the Federal Fair Labor Standards Act of 1938, as amended,[114] establishes minimum wages, maximum hours, overtime pay, equal pay and child labor standards. Persons under sixteen years are prohibited from working in most jobs covered by the Act, while those under eighteen years are prohibited from occupations declared hazardous by the Secretary of Labor.

As indicated by the reference under article 22, the Social Security system provides a wide variety of protections to wage earners and their families. Other special services are afforded to veterans, older workers, the physically handicapped, young people, members of minority groups, farm workers and disadvantaged people.

ARTICLE 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

The Walsh-Healey Public Contracts Act of 1936[115] and the Fair Labor Standards Act of 1938[116] established the forty-hour week for employees in interstate or foreign commerce and subsequent

112. 29 U.S.C. § 141 (1970).
113. 10 U.S.C. § 1021 (1970).
114. 29 U.S.C. §§ 201-19 (1970).
115. 5 U.S.C. § 616 (1970).
116. 29 U.S.C. § 201 (1970).

amendments extended the coverage to certain hotels, restaurants and large farms. In addition to the federal acts, various states have enacted legislation covering hours of work which are generally applicable only to women. Now through custom and collective bargaining, the normal work week is generally limited to forty hours or an eight hour day with paid holidays and vacations which not only increases available leisure time but also lengthens the time for educational preparation.

ARTICLE 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance.

The Social Security Act of 1935, and subsequent implementing legislation, recognized the right of every American "to a standard of living adequate for the health and well-being of himself and of his family." Under the several existing insurance and public assistance programs, needy persons are provided with means to purchase the necessities of life, including medical care, food and housing. References to the legislation are set out under earlier articles. They provide some degree of economic aid for the aged, the blind, dependent children and the unemployed. The old-age insurance program covers specified dependents of retired workers, as well as survivors of deceased workers.

Despite the several measures creating public assistance programs, there are a substantial number of individuals who have annual incomes below the poverty line. This number has been estimated as much as ten percent of the total population.

Health as a human right is recognized and receives specific recognition in the Medicare and Medicade programs. In those hospi-

tals complying with federal requirements—nearly one hundred percent of the nation's hospitals—beds are available to all people, without distinction or discrimination on the basis of race, color or national origin.

In the Housing Act of 1949,[117] Congress established as a national objective "a decent home and a suitable living environment for every American family." Subsequent Congressional legislation provided financial assistance in housing for low, moderate and middle income families. There are special housing programs for veterans, farm laborers, senior citizens, vocational trainees and college students. The assistance is made possible through direct loans and grants, as well as through mortgage insurance, guarantees and the purchase of mortgages. The goal of twenty-six million new and rehabilitated units in the current decade may not be reached, but every effort is being made. Six million of these units are intended for lower income families.

As referred to in previous articles, the principle of equal access to housing has been emphasized in the past decade. It reached a particularly high point in the Supreme Court decision in *Jones v. Mayer*[118] in which the Court held that the Civil Rights Act of 1866 prohibited discrimination in housing by private persons. Previously, the Act has been considered as limited to "government-sponsored" housing.

There is a Children's Bureau within the Department of Health, Education and Welfare. Its functions are not only the investigation of the welfare of children, but also assisting the states' maternal and child health services. The National School Lunch Act of 1946[119] authorizes the Department of Agriculture to provide cash and donate food to help schools establish lunch programs. The Child Nutrition Act of 1966[120] makes it possible for schools to serve breakfasts. Reports of malnutrition among children, particularly in urban slum areas, indicate that the programs must be expanded.

As long ago as 1909 the White House Conference on the Care of Dependent Children set forth the premise that "[h]ome life is the

117. 42 U.S.C. § 1441 (1970).
118. *Supra* note 8.
119. 42 U.S.C. § 1751 (1970).
120. 42 U.S.C. § 1771 (1970).

highest and finest product of civilization. It is the great molding force of mind and character. Children should not be deprived of it except for urgent and compelling reasons." Unfortunately, social mores have not always assured the same social protection to children born out of wedlock as to those born of lawful union. There are no legal barriers to such children in voting or holding public office; but there are many instances in which children born out of wedlock are subjected to primitive social pressures and legal limitations.

ARTICLE 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Although the United States Constitution does not mention education, it does provide for the "General Welfare." Historically, education was considered essentially a matter for local and state support, bolstered by considerable activity from religious and private institutions. A burgeoning national awareness of the necessity of education prompted the creation of the U.S. Office of Education in 1867.[121] By 1870 almost every state had eliminated tuition fees for public elementary schools and by 1920 for secondary schools. In 1917 Congress passed the Smith-Hughes Act[122] which provided

121. 20 U.S.C. § 1 (1970).
122. 20 U.S.C. § 11 (1970).

federal aid to states for vocational training. This has been followed by a series of federal statutes which authorized federal funds to be used directly and indirectly to give all American youth an opportunity for quality education. Other federally supported educational programs were established to assist adults who lack the ability to read or to perform other basic skills.

Illiteracy in the United States is estimated at two percent. In 1968 an estimated 57,600,000 Americans were enrolled in educational institutions: 36,700,000 in primary schools, 14,200,000 in high schools and 6,700,000 in higher education. The sheer magnitude of the American educational system, both in numbers and in costs, is impressive. Despite the record enrollment and the enormous expenditure for education, there are many young Americans who do not have access to a quality education—often because of racial discrimination. For many years after the Civil War there existed a dual school system in certain parts of the United States—one school for blacks, another for whites. This was considered permissible under a Supreme Court decision *Plessy v. Ferguson.*[123] In 1954, in the historic decision in *Brown v. Board of Education,*[124] the "separate but equal" doctrine was reversed and all public schools were required to desegregate. Emphasizing this reversal are a number of subsequent Court decisions and Congressional acts, including the Civil Rights Act of 1964[125] which barred segregated schools from receiving federal funds.

Efforts to eliminate racial discrimination have met strong resistance in some areas. However, the percentage of Negro children attending schools with white children in the eleven Southern states has increased enormously. It is estimated that at the end of 1969 there were 1,200,000 Negro children attending integrated schools in the South. But *de facto*, as opposed to *de jure*, segregation still presents an awesome problem. Although discrimination in housing may be unlawful, the actual living together of minority groups in certain neighborhoods has produced actual segregation in the neighborhood schools in the North as well as in the South. Efforts to minimize the results of this segregation are being exerted, partly through at-

123. *Supra* note 13.

124. *Supra* note 16.

125. 42 U.S.C. § 2000a (1970).

tempted busing and partly through raising the quality of education in these schools attended almost exclusively by minority groups.

There are approximately 122,000 different educational institutions in the United States and it is impossible to generalize about the extent to which the high standards set by article 26(2) are being achieved. Primary and secondary schools have been expanding their curricula to include social science, civics and international affairs. International affairs have become increasingly important in higher education. Major social science research programs on foreign affairs are being carried out in about two hundred university centers throughout the country.

The United States government, particularly through the Department of State, has sought to further the activities of the United Nations for the maintenance of peace. In 1968 the Department mailed appropriate material to more than 4,000 high schools, colleges and other educational institutions. The promotion of human rights by an understanding of the Universal Declaration of Human Rights has been a major activity of the U.S. National Commission for UNESCO.[126] The Commission has distributed thousands of posters, teachers' guides and booklets on human rights to national organizations and schools. Many private organizations, such as the United Nations Association of the U.S.A. with its college affiliate, and the National Education Association, provide similar assistance to schools and colleges.

The efforts of federal, state and local government to expand the scope and improve the quality of education have been accompanied by recognition of the prior right of parents to determine the course of their children's education. Although for over fifty years elementary education has been compulsory throughout the country, no law requires parents to send their children to a public school instead of a private school. A substantial number of parents send their children to religious or private schools, usually at their own expense.

ARTICLE 27

(1) Everyone has the right freely to participate in the cul-

126. FINAL REPORT, PRESIDENT'S COMMISSION FOR OBSERVANCE OF HUMAN RIGHTS YEAR, Jan. 30, 1969.

tural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The United States was the "new world" when it came into existence in 1776. It had no great tradition in cultural affairs. But every President from the time of Washington recognized that the arts are central to the nation's well-being. Early government patronage of the arts was primarily decorative and functional, involving the planning of cities and the construction of public buildings.

The establishment of the Library of Congress in 1800 marked the first Congressional venture into the arts. In the intervening years the federal government, as well as local and state governments, have supported a wide variety of cultural activities. It is the rare community that does not have its own library; certainly no metropolitan city is without its library, its museum, its art center. In the 1930's a special federal project, part of the Works Progress Administration, provided a means of unemployment relief for destitute painters, sculptors, writers, and musicians.

The constantly increasing government support on the federal level was recently evidenced by the passage of the National Foundation on the Arts and Humanities Act of 1965.[127] It created the National Endowment for the Arts,[128] charged with the reponsibility of creating programs to aid State organizations, public and private, in promoting progress in the arts. A number of other institutions and programs created by statute are in existence and receive federal funds, including the John F. Kennedy Center for the Performing Arts. Under the Civil Rights Act of 1964, any project receiving federal money must insure equal access to all persons without racial discrimination.

Scientific advancement is an integral part of the American tradition. It is notable that the United States Constitution empowered the Congress "[t]o promote the Progress of Science and useful

127. 20 U.S.C. § 951 (1970).
128. 20 U.S.C. § 954 (1970).

Arts."[129] Beginning with the initial years of building the new nation, the federal government has taken a lively interest in scientific areas. The advancement of science and technology in the United States has been supported on the national and local levels, and through academic institutions, philanthropic organizations, and private industry. Large amounts of public and private funds have gone into medicine, technology, communications, transportation, and every conceivable scientific area, including basic research on theories not now conceivable to the average citizen.

The right of protection to the author of any new scientific, literary or artistic production has its roots in the Constitution. It empowers Congress "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors, the Exclusive Right to their respective Writings and Discoveries."[130] The patent law, first enacted in 1790, recognizes a fundamental property right in the intellectual and manual creations of inventors by allowing them the patent protection. While the patent law has been revised in numerous respects over the years, its basic principle is that innovation should be encouraged and protected by an exclusive right. The patent right excludes others from using the patented invention for a fixed term of seventeen years.[131] After that time the public is free to use the invention.

The first national copyright law was enacted in 1790. It was amended over the years and completely revised in 1909. A proposed updating has been before Congress for a number of years. The basic protection is for a period of 28 years, subject to renewal as set forth in the statute.[132] The United States is a party to the United Nations Universal Copyright Convention which came into force in 1955, but is not a member of the Berne union.

ARTICLE 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

129. U.S. CONST. art. 1, § 8.
130. U.S. CONST. art. 1, § 8.
131. 35 U.S.C. § 154 (1970).
132. 17 U.S.C. § 24 (1970).

All nations of the world do not agree on what is "social and international order." In the United States, the order envisioned is one of constitutional government, democratic institutions, an economy of expanding opportunities, an atmosphere of tolerance and social justice, a respect for international law and a maintenance of peace.

The preceding commentaries on economic, social and cultural rights indicate the extent to which the United States has endeavored to provide its citizens with the kind of social order envisioned in article 28. But it is evident from the existence of such social illnesses as poverty, malnutrition, racial discrimination, religious prejudices and inadequate housing and educational facilities that the United States has not achieved its own hope for a perfect social order. Nevertheless, it is equally evident that Americans are now more concerned about achieving a better social order, and are doing more about it, than ever before.

To provide the "international order" contemplated by article 28 requires relations between the United States and all other countries designed to preserve peace and encourage economic and social progress. This concept—the need for a stable and peaceful world—is entirely beyond the scope of anything else in the Universal Declaration. Its realization is beyond achievement by any single country; it can be realized only through the cooperation of all countries.

In the technologically shrunken world of the twentieth century, no country is totally isolated from the effects of wars, revolutions, propaganda, subversion, economic rivalries, social tensions and cultural changes elsewhere in the world. The interests and rights of citizens in one country are inevitably affected by violence, upheavals, unrest and violations of human rights in other countries. Human rights in any country are safeguarded and promoted by political and economic stability, justice and peace; they are jeopardized by instability, injustice and war. Respect for human rights fosters peace; disregard for human rights fosters war.

The concept of "a social and international order in which the rights and freedom set forth in this Declaration can be fully realized" was anticipated in the Chapter of the United Nations, signed at San Francisco in June, 1945. The maintenance of international peace and security and the promotion of human rights and funda-

mental freedoms are proclaimed as the primary purposes of the United Nations in the Preamble and in article I of the Charter.

The United States has played a major role in the United Nations and its specialized bodies. It has made important contributions to the growth of international law in negotiating such vital multilateral agreements as the Limited Nuclear Test Ban Treaty, the Outer Space Treaty and the Non-Proliferation Treaty.

The United States has contributed consistent support over the past two decades toward creating "a social and international order in which . . . rights and freedoms . . . can be fully realized." The fact that this "social and international order," is not yet complete— that misery exists in our slums, in Appalachia, in Southern farmlands and that the world community remains endangered by war and threatened by aggression— demonstrates that the United States must make a continuing effort for the realization of this major goal.

ARTICLE 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

This article recognizes the principle that enjoyment of rights require the acceptance of responsibilities. In the United States, as elsewhere, the citizen has obligations to society. He has a legal duty to obey the law, pay taxes, serve in the armed forces, serve on juries and to testify in court. As an example,

> [p]ersons summoned as witnesses by competent authority have certain minimum duties and obligations which are necessary concessions to the public interest in the orderly operation of legislative and judicial machinery. . . . We have often iterated

the importance of this public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned.[133]

Every citizen is encouraged to vote and to participate in community affairs. The United States has an unlimited number of non-governmental organizations having religious, political, scientific, charitable, athletic, educational, commercial and other prime interests. Millions of Americans belong to these various organizations and through them seek to advance their particular purposes.

Any limitations imposed upon the people must be determined by law. This is the essence of the due process and the equal protection requirements of the fourteenth amendment to the Constitution. Balancing the rights of the individual against "the just requirements of morality, public order and the general welfare" claimed by the state is not a simple task. For example, the "right to own property" provided for in article 17(1) of the Declaration may be limited by the exercise of eminent domain by the government for the public interest. The problem of fairly balancing these rights has existed since the earliest days of the Republic. There can be no definite point of balance; in each period of time the result must be tested by the imagination, skill and patience of the American people and their leaders, influenced by the ideals expressed in the basic American documents.

The requirement of article 29(3) is general in nature. Among the purposes and principles enunciated in article 1 of the United Nations Charter, are those relating to human rights and fundamental freedoms. With respect to human rights, Phillip C. Jessup, a former member of the International Court of Justice, said:

[i]t is already law at least for members of the United Nations, that respect for human dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, treaty to which they are parties.[134]

With respect to the rights recognized in the United States Constitution and its amendments, it is difficult to conceive that they would be exercised contrary to the spirit of article I of the United Nations Charter. Thus, freedom of opinion and of expression would not be suppressed within the United States even though it were critical of specific activities of the United Nations, or even of the

133. United States v. Bryan, 339 U.S. 323, 331 (1950).

134. JESSUP, MODERN LAW OF NATIONS 91 (1968).

existence of the organization itself. This would be in keeping with the spirit of article 19 of the Universal Declaration.

ARTICLE 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

This concluding article states the principle that none of the rights and freedoms set forth in the Universal Declaration should be misused or abused to the detriment of some other right or freedom. The principle is equally applicable to governments, groups, and individuals. It might be characterized as a safeguarding article. No government, group, or individual can interpret the Declaration as creating the justification to destroy the rights of other governments, groups, or individuals. The article thus closes the declaration by imposing both restraints and privileges in the spirit of the Declaration itself.