

An Historical Analysis of Alien Land Law: Washington Territory & State 1853-1889†

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I. INTRODUCTION

From its earliest days as a territory until the present time, the area now known as the State of Washington experienced a diverse range of policies regarding alien land ownership. Throughout most of Washington's early history as a territory, the alien land laws—influenced principally by the need to stimulate immigration for economic growth—were nondiscriminatory and served to encourage alien land ownership. However, during the period immediately prior to statehood, the territorial lawmakers enacted legislation under which some aliens—most notably the Chinese and Japanese—were restricted from certain kinds of land ownership. This restrictive approach, which was incorporated in the state's constitution and which continued through the middle of the twentieth century to disable aliens from fully enjoying the rights of their nonalien neighbors, was the product of several factors. There were economic fears concerning industrial labor competition and the domination of agriculture by absentee landowners. There were also the insidious forces of xenophobia and bigotry. Aliens did not regain the unfettered right to own land in the state until after World War II, as restrictive alien land laws were gradually eliminated in response to the changing economic and social realities of the post-war years. Hence, modern-day aliens in Washington now stand in the same position as did their predecessors during most of the years before statehood; their right to own land is unrestricted by discriminatory alien land laws.

The purpose of this Article is to analyze the historical

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development of Washington's alien land law from the birth of the territory in 1853 to the drafting of the state constitution in 1889. Because alien land law necessarily involves relationships among people, this Article focuses not only on historical legal sources such as statutes, constitutional material, and judicial opinions, but also on the underlying social forces that compelled change in the law.

This Article consists of three sections, the first of which is a brief discussion of the common-law roots of alien land disability in feudal England and its subsequent application and transformation in colonial and post-Revolutionary War America. The second section traces the origins of Washington Territory's first alien land statute and considers the factors responsible for the pre-statehood evolution of that law. Included in the second section is a discussion of an early abortive attempt to achieve statehood that also signalled a turning point in the evolutionary development of Washington's alien land law. The third section explores the drafting of the state's constitutional provision that restricted the landowning rights of aliens. This section continues by discussing further statutory disabilities imposed after statehood, the judicial interpretations of the constitutional and legislative restrictions on alien land ownership, and the constitutional amendments that ultimately resulted in the elimination of the alien land disability altogether. The Article concludes by summarizing the main themes of the historical development of Washington's alien land law.

II. THE COMMON LAW ALIEN LAND DISABILITY

The common law, as inherited by the American colonies from England, did not permit aliens to own land on an equal footing with subjects of the crown. Aliens could take land only by act of the parties through sale, devise, lease, or gift, but the right to hold onto land so acquired was limited because the English monarch had the prerogative to claim an alien's land holdings without compensation through a divestment process known as "inquest of office."¹ Moreover, because this potential

1. 2 W. BLACKSTONE, COMMENTARIES *293. See also McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CALIF. L. REV. 7, 18-19 (1947) [hereinafter McGovney]; Sullivan, *Alien Land Laws: A Re-evaluation*, 36 TEM. L. Q. 15, 16 (1962) [hereinafter Sullivan]. Although an alien buyer of land stood to lose both his price and his land if forfeiture occurred, a citizen who sold land to an alien was

for forfeiture followed the land on conveyance, an alien could convey only a defeasible title at best, regardless of whether the acquiring party was another alien or a crown subject.² A further disability existed, because aliens were considered to lack "inheritable blood," and thus were not permitted to take or convey land by operation of law.³ Two consequences resulted from this feature of the common law alien land disability. First, land that might otherwise go to an alien by operation of law escheated to the sovereign unless an eligible heir of the decedent could be found. Second, untransferred land remaining at the time of an alien landowner's death automatically escheated because aliens were deemed to have no legal heirs.⁴

Thus, the alien at common law was truly under a disability. At most, he could do little more than occupy land. Land ownership, to the extent that it was possible, was a hollow state of affairs; not only might the alien lose his land and purchase money, his ability to convey land was diminished by the fact that those who acquired his land also acquired his disability of potential forfeiture. And, due to a lack of "inheritable blood," he could not provide for the future of his family's real property interests with any degree of certainty. Such uncertainty, coupled with the threat of forfeiture of land acquired through an act of the parties, made investment in improvements to the land a risky matter.

The origins of the common law alien land disability are somewhat cloudy. It is generally accepted that the disability arose in thirteenth-century feudal England.⁵ Chief Justice Coke rationalized the crown's prerogative to seize alien landholdings in wartime as a measure to protect the secrets and revenues of the realm, and in peacetime as a means to assure sufficient English freeholders to serve as jurors.⁶ However, it

permitted to keep the price. McGovney, at 19. Inquest of office is also referred to as "office found." BLACK'S LAW DICTIONARY 712 (5th ed. 1979).

2. McGovney, *supra* note 1, at 19; Sullivan, *supra* note 1, at 16.

3. 2 W. BLACKSTONE, COMMENTARIES *249. See also McGovney, *supra* note 1, at 18; Sullivan, *supra* note 1, at 16-17. Here, operation of law includes intestacy, dower, and curtesy. Sullivan, at 16.

4. 2 W. BLACKSTONE, COMMENTARIES *249. See also Sullivan, *supra* note 1, at 16-17.

5. McGovney, *supra* note 1, at 19. (citing POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW 463 (2d ed. 1898)).

6. *Id.* (citing *Calvin's Case*, 77 Eng. Rep. 377 (1609)). Apparently, the idea behind the peacetime rationale was that aliens would eventually hold more land than English subjects—an "absurd exaggeration," according to McGovney. *Id.* at 20.

has been suggested that Coke's explanation is deficient because, except for the right to acquire and hold land, aliens could reside in England and were able to carry on their lives and businesses essentially the same as English subjects.⁷ Another reason for the alien disability, put forward by some historians of English law, is that it evolved from the tendency of thirteenth-century English kings to seize the lands of their Norman and other French enemies.⁸

Conventional wisdom, based on the teachings of Blackstone, suggests that the disability resulted from the feudal tenurial incident of military service which tied defense of the kingdom to the way in which land was held by manorial lords and their tenants.⁹ Under the feudal system, land was held, rather than owned, in the modern sense of the word, based upon personal oaths of fealty (loyalty) between king and lord, and similarly, between lord and tenant.¹⁰ Through this arrangement, the tenant promised to provide certain services, including military service, to the lord in exchange for the right to hold and use the land.¹¹ The promise, once made, devolved to the tenant's heirs and to any subtenants who might later, through subinfeudation, have use of part of the tenant's holdings.¹² Since an alien, by definition, was presumed to have divided loyalties, the feudal lords were reluctant to let control of the land pass to someone who might later prove to be an enemy in their midst.¹³ Even if he were not an active antagonist, an alien who owed no allegiance to the lord of the land was not expected to defend him with the same zeal as a "loyal" subject.

Whatever the real reason for the alien land disability, it persisted in England until abolished by Parliament in 1870.¹⁴ During England's colonization of America, however, the

7. *Id.* at 20.

8. *Id.* at 19.

9. 2 W. BLACKSTONE, COMMENTARIES *250. See also McGovney, *supra* note 1, at 20.

10. MORRISON & KRAUSE, STATE & FEDERAL LEGAL REGULATION OF ALIEN & CORPORATE LAND OWNERSHIP & FARM OPERATION 13 (1975) (citing 1 POLLOCK & MAITLAND, HISTORY OF ENGLISH LAW 458-67 (reissued 2d ed. 1968)) [hereinafter MORRISON & KRAUSE].

11. *Id.* See also C. MOYNIHAN, INTRODUCTION TO THE LAW OF REAL PROPERTY ch. 18 (1962).

12. MORRISON & KRAUSE, *supra* note 10, at 13.

13. *Id.*

14. McGovney, *supra* note 1, at 20.

Crown planted the seeds of her alien disability laws in a land destined to be populated by untold numbers of aliens. That destiny grew out of necessity. The American continent was huge, largely uninhabited, and rich in natural resources; many people would be required to exploit its potential fully. Also, the dream of land ownership was a strong motivation for emigrants willing to risk life and treasure in the hardships of ocean passage and settlement in an unfamiliar land. The alien land disability, rooted in anachronistic feudal notions, would act as an impediment to the fulfillment of such dreams.

A. The Common Law Alien Land Disability in the Colonies

Although the feudal basis for the alien disability did not exist in the new world, it appears that the American colonies generally, but reluctantly, adhered to the rule that aliens could not hold good title to land.¹⁵ The colonists were not especially enamored of the rule because it tended to be a brake on immigration and development of the land.¹⁶ As much as they may have wanted to, however, the colonists were in no position to eliminate the alien disability through enactment of new laws. Standing in the way of progress were the veto power of the colonial governors and the ultimate possibility of rejection by the Crown.¹⁷

Regardless of official British policy, the Colonies found ways to get around the alien land disability. Denization and naturalization were popular methods for the individual alien,¹⁸ general legislation to quiet and confirm titles was also employed.¹⁹ After attaining the status of a denizen, an alien could buy and hold land and pass it on to those of his offspring who were born after denization.²⁰ England tolerated this practice for a number of years but, in 1709, it reduced the authority of colonial governors to confer the denizen status on aliens.²¹ Of course, naturalization was the favored means to avoid the alien disability because it carried the rights of citizenship. The British passed a naturalization law for the colonies in 1740, but aliens were typically naturalized, as they had been previously,

15. See Sullivan, *supra* note 1, at 15 n.2.

16. See *id.* at 28.

17. See *id.* at 27.

18. See *id.*

19. *Id.* at 28.

20. *Id.* at 27. A denizen acquired no political rights. *Id.*

21. *Id.*

by private legislation that was effective only within the new citizen's own colony.²² In addition to the preceding mechanisms, aliens in more heavily populated colonies, such as New York and New Jersey, benefitted from general colonial legislation that quieted and confirmed title to land formerly held by aliens.²³ This last practice persisted until 1773, after which England required the colonial governors to veto legislation related to alien land titles and naturalization.²⁴

B. The American Revolution and the Alien Land Disability

Among the colonies, the alien land disability was a significant source of discontent with English rule. The British actions after 1773 especially threatened to dampen immigration and economic growth. Therefore, it was not surprising that the Declaration of Independence charged that the Crown had "endeavored to prevent the population of these States: for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands."²⁵

Nonetheless, the alien land disability was not immediately discarded after the Revolution. With the winning of independence, Americans continued to disable landholding rights of aliens, especially when the alien was a British subject who retained land in the United States after the war.²⁶ Also, the alien disability was firmly rooted in practice and it was convenient for the new states to follow the common law when it suited their purposes.²⁷

The states, however, were free to fashion their own alien land laws if they so chose.²⁸ One state that departed from the common law disability was Vermont. Under the Vermont Constitution of 1793, aliens "of good character" who resided in the

22. *Id.* Private bills continued to be used after 1740 because the British naturalization law required residency for seven years in the colonies. *Id.*

23. *Id.* at 28.

24. *Id.*

25. The Declaration of Independence para. 9 (U.S. 1776).

26. See Sullivan, *supra* note 1, at 29 n.62. In 1794, a treaty between the United States and England recognized the rights of British subjects in their American landholdings. Treaty of Amity, Commerce and Navigation, United States—Great Britain, Nov. 19, 1794, art. IX, 8 Stat. 116, 122, T.S. No. 105. The treaty's supremacy was upheld in *Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603 (1812).

27. Sullivan, *supra* note 1, at 28-29. See generally L. FRIEDMAN, A HISTORY OF AMERICAN LAW 107-15 (2d ed. 1985).

28. See *Hauenstein v. Lynham*, 100 U.S. 483, 484 (1880).

state for at least one year were given the same rights as citizens.²⁹ Ohio was another state to discard the disability. In 1804, its legislature passed an act which provided "any and all aliens" the same rights in land as any native citizen.³⁰ Ohio's law would provide the model for the western frontier territories to follow in the coming years.

III. WASHINGTON TERRITORY

Washington was organized as a territory in 1853; its area consisted of the residue of Oregon Territory following the admission of Oregon into the Union in 1846.³¹ Alien landholding rights in Washington Territory, and later in the state, were the subject of numerous laws. Throughout most of the territory's history, aliens were statutorily able to own land much as they are now—without restriction. Statehood, however, and the years immediately preceding it, brought statutory and constitutional disabilities which effectively eliminated the possibility of land ownership for certain classes of aliens.

These changes in Washington's alien land law were associated with conflicting motivations. Pulling in one direction was the continuing need to settle and develop a large and sparsely-populated territory. Pulling in the opposite direction were several forces: a desire to protect the jobs of workers in troubled economic times, the need to keep land affordable and available, and a fear of foreign cultures.

A. Alien Land Law of 1864

The first alien land law enacted in Washington was passed by the territorial legislature in 1864. It provided that any alien could acquire, hold, and convey land as though a citizen.³² This

29. VT. CONST. of 1793, ch. II, § 39.

30. Act of Feb. 3, 1804, § 1, 1804 Ohio Laws 123. For the contemporary version of this law, see OHIO REV. CODE ANN. § 2105.16 (Page 1976).

31. Organic Act of Mar. 2, 1853, ch. 90, § 1, 10 Stat. 172.

32. Act of Jan. 27, 1864, § 1, 1864 Wash. Laws 12, amended by Act of Jan. 29, 1886, § 1, 1885-86 Wash. Laws 102, and repealed by Act of Feb. 3, 1927, ch. 56, § 1, 1927 Wash. Laws 45. The act read:

Section 1. Be it enacted by the Legislative Assembly of the Territory of Washington: That any alien may acquire and hold lands or any right thereto or interest therein by purchase, devise, or descent, and he may convey, mortgage and devise the same, and if he shall die intestate the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged, or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this Territory or of the United States.

law was undoubtedly copied, in only a slightly modified form, from the 1854 property law of Oregon Territory.³³ However, its origins extended back through the laws of several other territories to Ohio's alien land law of 1804. The Ohio statute, which permitted aliens to "hold, possess and enjoy" land as fully and completely as any United States citizen,³⁴ was specifically adopted as the law of Michigan Territory in 1805.³⁵ Continuing its westward migration from Michigan, the alien land law became established in the territories of Wisconsin,³⁶ Iowa,³⁷ Oregon,³⁸ and Washington. Although each territory—

Section 2. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected by reason of the alienage of any person from or through whom such title may have been acquired.

33. See Act of Jan. 16, 1854, 1854 Ore. Laws 378. The act read:

Section 35. Any alien may acquire and hold lands, or any right thereto, or interest therein by purchase, devise or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of this state or of the United States.

Section 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected by reason of the alienage of any person, from or through whom such title may have been derived.

34. Act of Feb. 3, 1804, § 1, 1804 Ohio Laws 123.

35. Act of Aug. 12, 1805, 1805 Mich. Laws 32, *repealed by* Act of Feb. 21, 1809, No. 60, 1809 Mich. Laws 60. Michigan passed its own alien land law, without reference to Ohio, in 1806. A model of brevity, the law authorized aliens "to hold lands, in the Territory of Michigan, by purchase or otherwise." Act of Aug. 12, 1806, 1816 Mich. Laws 135. In 1827, Michigan Territory redrafted its alien land law, but the meaning was the same despite considerable changes in organization and wording compared with the Ohio statute of 1804. See Act of Mar. 31, 1827, 1827 Mich. Laws 332. For the contemporary version of this law, see MICH. COMP. LAWS ANN. § 554.135 (West 1967).

36. Michigan's existing laws were applied to Wisconsin when the latter became a territory in 1836. Organic Act of Apr. 20, 1836, ch. 54, § 12, 5 Stat. 10, 15. Apparently, no fault was found with the alien land law acquired from Michigan; in 1838, Wisconsin Territory's Second Legislature passed legislation virtually identical in substance, organization, and wording to the Michigan law of 1827. See 1838-39 Wisc. Laws 179.

37. Iowa also acquired its laws by congressional mandate upon territorial organization. See Organic Act of Jun. 12, 1838, ch. 96, § 12, 5 Stat. 235, 239. There is no indication that Iowa Territory statutorily addressed the subject of alien land ownership in the years between its creation and the publication of its revised statutes in 1843.

38. Oregon Territory consisted of a vast area of land which included present-day Oregon, Washington, Idaho, and part of western Montana and Wyoming. ORE. WRITERS' PROJ., OREGON 42 (1940). Settlers in Oregon's Willamette Valley originally formed a provisional government, *id.* at 46, which adopted the laws of Iowa passed at the first session of the Iowa assembly. See Act of Jun. 27, 1844, § 1, 1844 Ore. Laws 100. Subsequently, when the United States Congress enacted legislation in August 1848 to formally organize Oregon Territory, it permitted the laws of the provisional government to remain in force. Organic Act of Aug. 14, 1848, ch. 177, § 14, 9 Stat. 323, 329. Interestingly, Congress did not specifically require adoption of the law of a

upon its formation under a congressional organic act—acquired laws of its predecessors that later could be repealed or amended at the territorial level,³⁹ no substantive changes occurred by the time Washington Territory was carved from Oregon Territory.

Washington acquired more than land from its southern neighbor. Under the organic act that established it as a territory on March 2, 1853, Washington adopted the existing law of Oregon Territory.⁴⁰ When it finally enacted its own alien land law in 1864, Washington Territory simply copied Oregon's 1854 Alien Land Act. Except for minor differences, the Washington law was a mirror image of the Oregon law in language and organization.⁴¹ Like the Oregon statute, one section of Washington's Alien Land Act gave any alien the right to acquire, hold, and dispose of land "as if such alien were a native citizen of [the] Territory, or of the United States."⁴² A second section served to quiet title on lands previously acquired from aliens.⁴³

particular territory in Oregon; however, since Iowa law had been provisionally effective, Congress essentially approved its continued operation. *See id.* In 1849, Oregon Territorial Legislature adopted, subject to later amendment, Iowa's revised laws of 1843. *See Act of Sept. 29, 1849, § 1, 1849 Ore. Laws 103.* Because Iowa, by 1843, had still not enacted an alien land law of its own, it was operating with the law inherited from Wisconsin. Thus, by extension, Wisconsin's alien land law was also controlling in Oregon, at least until the latter passed its own statute in January of 1854.

The 1854 alien land law of Oregon Territory provided the same freedom to acquire, hold, and dispose of land as earlier territorial laws already discussed. *See Act of Jan. 16, 1854, § 35, 1854 Ore. Laws 378.* Oregon's alien land statute, unlike those of Wisconsin and Michigan, consisted of only two sections instead of three, but its language reveals its heritage. This is especially the case with § 36 which provided that former land titles were not to be questioned by reason of alienage. *Id.* § 36. Section 36 was a virtual copy of its predecessors. *Compare § 36 with Wisconsin's § 7, 1838-39 Wisc. Laws 179, and with Michigan's § 2, 1827 Mich. Laws 332.* Furthermore, even the principal part of Oregon's statute, § 35, appears to have synthesized in a condensed form what the earlier laws in Wisconsin and Michigan set forth in two sections. *Compare § 35 with Wisconsin's §§ 6, 8, 1838-39 Wisc. Laws 179, and with Michigan's §§ 1, 3, 1827 Mich. Laws 332.*

39. *See, e.g., Organic Acts of Apr. 20, 1836, ch. 54, § 12, 5 Stat. 10, 15 (Wisconsin); Jun. 12, 1838, ch. 96, § 12, 5 Stat. 235, 239 (Iowa); Aug. 14, 1848, ch. 177, § 14, 9 Stat. 323, 329 (Oregon); Mar. 2, 1853, ch. 90, § 12, 10 Stat. 172, 177 (Wash.).*

40. *Organic Act of Mar. 2, 1853, ch. 90, § 12, 10 Stat. 172, 177.* Since in March 1853 Oregon's alien land law was the same as Wisconsin's, Washington Territory likewise followed the Wisconsin rule.

41. *Compare Washington's Act of Jan. 27, 1864, 1864 Wash. Laws 12 with Oregon's Act of Jan. 16, 1854, 1854 Ore. Laws 378. See supra notes 32 & 33.*

42. *Act of Jan. 27, 1864, § 1, 1864 Wash. Laws 12, amended by Act of Jan. 29, 1886, § 1, 1885-86 Wash. Laws 102, and repealed by Act of Feb. 3, 1927, ch. 56, § 1, 1927 Wash. Laws 45.*

43. *Act of Jan. 27, 1864, § 2, 1864 Wash. Laws 12.*

Both sections of Washington's Alien Land Act undoubtedly were intended to promote immigration in order to develop the large, mostly unexplored, and sparsely-populated territory.⁴⁴ However, within the next decade, the territorial legislators found it necessary to further liberalize the law, not only because of the need to attract more immigrants for the labor they might supply, but also because of the need to encourage the investment of foreign capital in the territory's railroad and mining industries.

B. Laws Related to Alien Land Rights Expanded—1875

1. Economic Growth and The Need for Immigration and Foreign Capital

The economic opportunities of the territory encouraged many people to migrate from other parts of the country, but legislative action would eventually be viewed as necessary to induce people to migrate to the northwest; there were simply more opportunities than immigrants to exploit them.⁴⁵ Washington's abundant farm acreage needed hands to till the soil and harvest the crops,⁴⁶ and its industries required large numbers of laborers to build and operate machinery used to exploit the land and waters of the territory. For example, sawmills, located mainly in the Puget Sound area, were built to export

44. The territory was the most remote of all destinations in the country, its weather was often maligned as perpetually wet, and other territories and states were competing for every able-bodied settler and his family. See *Messages of the Governors of the Territory of Washington to the Legislative Assembly, 1854-1889*, 12 U. WASH. PUBL. SOC. SCIENCES 1, 183 (1940) (report of Gov. Elisha P. Ferry to the legislature on Oct. 9, 1873) [hereinafter *Messages*].

45. Washington's population increased from 11,594 to 23,450 during the 1860s. *Messages, supra* note 44 at 158, (report of Gov. Edward S. Salomon to the legislature on Oct. 2, 1871). Cf. *id.* at 179 (report of Gov. Elisha P. Ferry to legislature on Oct. 9, 1873 stated that the population in 1870 was 23,995). Some of the new arrivals moved westward because of the Civil War. AVERY, HISTORY & GOVERNMENT OF THE STATE OF WASHINGTON 240 (1961) [hereinafter AVERY].

46. By 1870, there were several thousand highly productive farms in the territory, and farming communities, such as Walla Walla in the southeast, were rapidly increasing in size. AVERY, *supra* note 45, at 250. In 1866, the western part of the territory was estimated to contain about 3.2 million acres of desirable, but barely developed, farmland. *Messages, supra* note 44, at 125 (report of Gov. William Pickering to the legislature on Dec. 11, 1866). Governor Pickering expressed concern that immigrant farm families were deterred from crossing the Cascades due to poor roads, thus causing the population in the western part of the territory to be about as sparse as it was a decade earlier; he also provided a detailed survey on the amount of fertile farmland in the territory. *Id.*

lumber to California;⁴⁷ coal mining, which began near Seattle in 1853, expanded as new deposits of the mineral were discovered in the early 1860s;⁴⁸ gold mining activity grew with each new ore discovery;⁴⁹ commercial fishing became important with the construction of a salmon cannery on the southwest coast in 1866;⁵⁰ and ship building, spurred by the availability of lumber, was expected to become a major business on Puget Sound as the population increased.⁵¹

With all these demands on Washington's existing population, it made sense to try to attract as many immigrants as possible; some had capital to invest in infant industries, and all could contribute their labor to the development of the territory. Although a change in the territory's alien land law would have helped spur immigration, the legislature still did not act until it became apparent that Washington's future depended upon a rail connection to the rest of the nation—a rail connection that could not be built without massive quantities of both laborers and money.

In contrast, the territorial governors appreciated the inherent advantages of increased immigration. When he spoke to the legislature in December of 1867, Governor Marshall

47. AVERY, *supra* note 45, at 265. By the mid-1870s, the lumber industry provided, directly or indirectly, employment for several thousand men. *Messages, supra* note 44, at 187 (report of Gov. Elisha P. Ferry to the legislature on Oct. 5, 1875).

48. AVERY, *supra* note 45, at 276-77. A thick vein of semi-bituminous coal was located near Bellingham Bay. *Messages, supra* note 44, at 60 (report by Gov. Charles H. Mason to the legislature on Dec. 8, 1858). Coal deposits were also discovered at other locations, including the vicinity of the Straits of Juan de Fuca and along the Columbia and Chehalis Rivers. *Id.* at 139 (report of Gov. Marshall F. Moore to the legislature on Dec. 9, 1867).

49. Gold strikes in the Clearwater River area in 1860 led, within a half-year's time, to the employment of approximately 7,000 persons in prospecting and outfitting activities. *Id.* at 76 (report of Gov. Henry M. McGill to the legislature on Dec. 6, 1860). See also AVERY, *supra* note 45, at 271-72. Gold was also discovered near Fort Colville in the summer of 1854, but warfare with the Indians and poor transportation and weather detracted from efforts to exploit the find. *Messages, supra* note 44, at 20-21 (report by acting Gov. Charles H. Mason to the legislature on Dec. 7, 1855). An estimated 8-10 million dollars' worth of gold was mined from diggings on tributaries of the Columbia River during 1862, and 18-25 million dollars' worth of gold was mined in the next year. *Id.* at 109, 115 (reports by Gov. William Pickering to the legislature on Dec. 17, 1862 and Dec. 23, 1863, respectively). In his earlier report, Pickering noted that the money involved was "astonishingly large" and, most importantly, that gold mining caused the establishment of new towns. Rich deposits were also believed to be located in the mountains of the territory, based on discoveries in the mid-1860s. *Id.* at 123 (report by Gov. William Pickering to the legislature on Jan. 1, 1866).

50. AVERY, *supra* note 45, at 260.

51. *Messages, supra* note 44, at 169 (report of Gov. Edward S. Salomon to the legislature on Oct. 2, 1871).

Moore told the lawmakers that all the territory needed to become a great commonwealth was “*population*, and its inseparable concomitant, *capital*.”⁵² Such gubernatorial statements were a common expression of Washington’s need for more people. In 1873, Governor Elisha P. Ferry stated that “the manifest want of [the] territory is population,” thus reiterating and reinforcing an 1871 appeal by his predecessor, Governor Edward S. Salomon, that the territory should set up a board of immigration.⁵³ Ferry suggested that, in order to compete with similar systems in other territories and states, the board should induce immigration by communicating the desirability of the territory to Europe and the eastern United States and by procuring “cheap transportation for all those who desire to come hither.”⁵⁴

One inexpensive, safe, and quick method of bringing more people into Washington Territory was to move them across the United States by rail. This was an especially attractive alternative, given the hazards associated with wagon trains and ocean voyages. Indeed, the construction of the transcontinental railroad along a northern route had been a preoccupation bordering on obsession for Washingtonians, dating back to the days of the first territorial governor, Isaac Stevens. Stevens had surveyed a Lake Superior-to-Puget Sound route as he travelled west in 1853 to begin his gubernatorial assignment.⁵⁵ However, one barrier to construction of the railroad was the lack of labor. Speaking to the legislature in December of 1859, Governor Richard D. Gholson suggested that the solution was simple: the western end of the line could be built by “myriads of

52. *Id.* at 140 (report to the legislature on Dec. 9, 1867) (emphasis in original).

53. *Id.* at 179 (report to the legislature on Oct. 9, 1873).

54. *Id.* Ferry said that agents for other territories and states were intercepting immigrants and telling them false things about the climate and economy of Washington. *Id.* at 183 (report to the legislature on Oct. 5, 1875). He suggested Washington employ an agent of its own on the migration route and circulate correct information about the territory. *Id.* Apparently, most of the immigration board’s work was done by women on a volunteer basis. *See id.* In 1881, Governor William A. Newell told the assembly that a better system was needed for promoting immigration—such as a Bureau of Immigration with offices east and west of the mountains to bring people and capital into the territory. *Id.* at 229 (report to the legislature on Oct. 5, 1881). Again, in 1883, Governor Newell called for a bureau to handle immigration matters, including assistance [to immigrants] in finding “suitable homes adapted to their inclinations and requirements.” *Id.* at 244 (report to the legislature on Oct. 3, 1883). Another appeal for creation of a Board of Immigration was issued by Governor Watson C. Squire in his message to the legislature on December 9, 1885. *Id.* at 259.

55. AVERY, *supra* note 45, at 165.

the sallow, but patient and sturdy John Chinamen," along with "others of his caste," who could be invited to immigrate with the promise of transportation, "protection of our laws," and "profitable employment."⁵⁶

Given subsequent events, it is unclear just exactly what was meant by "protection of our laws" in the context of promoting Chinese immigration. Perhaps Governor Gholson was referring to the liberal and nondiscriminatory alien land law that Washington Territory inherited from Oregon. Certainly, other territorial legislation that came after Gholson's suggestion—such as an 1864 act which imposed a "police tax" on coolie labor—did nothing to encourage "John Chinaman" to view Washington as anything but a hostile place to scrape out a living.⁵⁷

Despite the "police tax," the Chinese came, first to satisfy a hunger for gold, then to engage in other labors such as railroad construction.⁵⁸ However, just four years after Governor Gholson's inviting message, the territorial legislators learned that the introduction of Chinese labor was causing serious tension in the mining regions; citizens complained of being pushed aside by large numbers of Chinese.⁵⁹ Yet, the mid-1860s were boom times when most people, aside from the miners who resented competition from the Chinese, were concerned about exploiting the next opportunity rather than worrying about the land rights of a relatively few orientals toiling in the sand and gravel of some distant stream bed. Such worries could wait for later—as could changes in Washington Territory's alien land law.

56. *Messages, supra* note 44, at 72 (report to the legislature on Dec. 7, 1859).

57. The act, passed in January of 1864, was intended to "protect free white labor against competition with Chinese coolie labor, and to discourage the immigration of the Chinese into [the] territory"; it levied a quarterly "police tax" on all resident Chinese over the age of eighteen. Act of Jan. 23, 1864, 1864 Wash. Laws 56, *repealed by* Act of Nov. 25, 1869, 1869 Wash. Laws 351. California enacted a "police tax" in 1862 for the same reasons. W. CHOW, *THE RE-EMERGENCE OF AN INNER CITY: THE PIVOT OF CHINESE SETTLEMENT IN THE EAST BAY OF THE SAN FRANCISCO BAY AREA* 31 (1977) [hereinafter CHOW].

58. AVERY, *supra* note 45, at 197. Chinese miners were used to cull the debris produced by placer mining—they were painstakingly meticulous and willing to work for bare subsistence wages. *Id.* at 273-74.

59. *Messages, supra* note 44, at 115 (report of Gov. William Pickering to the legislature on Dec. 23, 1863).

2. Changes in Land Laws Affecting Aliens and Foreign Corporations

When change finally visited the alien land law of Washington, it occurred more in response to the need to complete the railway link from the territory to the rest of the United States than to any racially-based economic motivations. The hope was that the Northern Pacific Railroad would ultimately complete a connection to the western side of the Cascades,⁶⁰ but construction was slowed by war, both here and abroad. In this country, the Civil War caused delay;⁶¹ in Europe, the Franco-Prussian War was a retarding factor because foreign governments and private investors were too involved with their own problems to invest in American railroads.⁶² Moreover, the railroad's completion was further hindered by the depression of 1873, which led to the collapse of the Northern Pacific's financial backing.⁶³ After all of the setbacks, even the governor seemed resigned to a long wait before masses of immigrants would arrive in Washington aboard trains.⁶⁴ What had begun twenty years earlier with Governor Stevens' first trip to Washington Territory seemed still more hope than reality in the mid-1870s.

Apparently, Washington's legislators hoped they could change the realities and stimulate railroad construction by modifying the territorial laws that affected the landholding rights of individual aliens and foreign-owned corporations. Although Governor Ferry, in his speech to the legislature in October of 1875, claimed that people had learned not to depend upon foreign corporations and capital to develop the territory,⁶⁵ the lawmakers still showed a willingness to curry the favor of foreign interests. A month after the governor's address, two laws were enacted that dealt with alien land rights in a manner that showed solicitude for railroad con-

60. *Id.* at 171 (report of Gov. Edward S. Salomon to the legislature on Oct. 2, 1871). The Governor noted: "I am not aware that the directors of the road desire or need any legislation to facilitate their work, but if they do, I doubt not that anything reasonable and in the power of the Legislature, will cheerfully be done to further this project. . . ." *Id.*

61. WRITERS' PROGRAM, WASHINGTON—A GUIDE TO THE EVERGREEN STATE 59 (1941) [hereinafter EVERGREEN].

62. *See id.*

63. *Id.*

64. *See Messages, supra* note 44, at 193 (report of Gov. Elisha P. Ferry to the legislature on Oct. 5, 1875).

65. *Id.* at 192.

struction. The first law added a section to the already-liberal alien land statute of 1864;⁶⁶ this addition permitted aliens, regardless of their residence, the right to acquire, hold, use, and dispose of railroads, tramways, and bridges.⁶⁷ The second law permitted foreign corporations to "acquire, hold, use and dispose of in the corporate name all real estate necessary or convenient to carry into effect the objects of . . . incorporation."⁶⁸ These rights were made available to any corporation, whether incorporated under the laws of another state or any foreign country, without the requirement of a resident agent.⁶⁹

Given the economic slump, it appears these enactments may have played some role in the completion of the coveted transcontinental railroad. The Northern Pacific Railroad, which had been reorganized a few months before passage of both laws in 1875, soon came under the leadership of a Bavarian immigrant named Henry Villard.⁷⁰ Later, in 1883, and with the financial help of Villard's German backers, the Northern Pacific finally completed its rail link between St. Paul, Minnesota, and Tacoma, Washington Territory.⁷¹

Assuming that the 1875 liberalization of the laws discussed above may have contributed to the territory's economic devel-

66. The 1864 alien land law, which is set forth in detail at note 32, *supra*, permitted individual aliens to own and convey land in the same manner as native citizens of the territory or of the United States. Act of Jan. 27, 1864, § 1, 1864 Wash. Laws 12, amended by Act of Jan. 29, 1886, § 1, 1885-86 Wash. Laws 102, and repealed by Act of Feb. 3, 1927, ch. 56, § 1, 1927 Wash. Laws 45.

67. Act of Nov. 5, 1875, § 2, 1875 Wash. Laws 112, amended by Act of Jan. 29, 1886, § 2, 1885-86 Wash. Laws 102, and repealed by Act of Feb. 3, 1927, ch. 56, § 1, 1927 Wash. Laws 45. Tramways were used to transport minerals. See AVERY, *supra* note 45, at 277. Congress passed a law in 1872 that permitted ownership of mineral lands only by citizens and persons who declared their intention to become citizens. Act of May 10, 1872 ch. 152, 17 Stat. 91.

68. Act of Nov. 5, 1875, § 1, 1875 Wash. Laws 109-10, amended by Act of Feb. 3, 1886, § 1, 1885-86 Wash. Laws 87. Prior to 1875, unrestricted land rights were extended to "all corporations" formed under the laws of the states or other territories that maintained a resident agent in the territory. See Act of Nov. 29, 1871, § 1, 1871 Wash. Laws 101, amended by Act of Nov. 5, 1875, 1875 Wash. Laws 109-10. The old law did not use the term "foreign." See *id.* Nonetheless, it at least applied to domestic corporations controlled by aliens and, to that extent, was consistent with the spirit of the liberal alien land law then in existence.

69. *Id.* Oregon passed a similar law in 1872, which may have served as the model for the Washington legislation. See Act of Oct. 4, 1872, § 35, 1872 Ore. Laws 10.

70. 1 H. HUNT & F. KAYLOR, WASHINGTON—WEST OF THE CASCADES 266, 270 (1917) [hereinafter HUNT & KAYLOR]. Villard, who was installed as president of the Northern Pacific in 1881, *Id.* at 268, was well known for his fund-raising talents. 2 C. BAGLEY, HISTORY OF SEATTLE—FROM THE EARLIEST SETTLEMENT TO THE PRESENT TIME 247 (1916).

71. HUNT & KAYLOR, *supra* note 70, at 270.

opment, the next part of this Article suggests that some Washingtonians were nevertheless concerned about perceived negative results flowing from the expanded rights that accompanied those laws. When that concern gained sufficient strength, further change in the laws ensued, but this time the change would be restrictive in nature.

*C. Laws Related to Alien Land Rights Restricted—
1878 & 1886*

1. Constitution of 1878

Although liberal laws regarding aliens and foreign corporations may have stimulated Washington Territory's immigration and economic growth, some citizens saw certain aliens as enough of a threat to warrant a new and restrictive approach to alien landholding rights. Thus, when Washington's voters approved formation of a constitution in 1878 aimed at achieving statehood, language was drafted which provided *resident* aliens the same rights in land as citizens.⁷² This was a change in the existing law, which had extended those rights to *any* alien.⁷³ Additionally, the same constitutional article proscribed incidents of feudal tenures, such as restraints on alienation of land.⁷⁴ Specifically declared void were agricultural land leases and grants in excess of fifteen years that might act to reserve any kind of rent or services.⁷⁵ This measure was an effort not only to prevent farm land from becoming tied up by long leases, but also to discourage absentee-landlordism,⁷⁶ especially by foreign (*i.e.*, alien) investors. Generally typical of such foreigners was the notorious William Scully, an absentee Irish owner of over 220,000 acres in the midwest, who was known for the harsh treatment he meted out to his farm tenants.⁷⁷

The constitution was accepted by a majority of the electo-

72. WASHINGTON'S FIRST CONSTITUTION, 1878, AND PROCEEDINGS OF THE CONVENTION, ART. V, 18 (E. Meany & J. Condon eds. 1919) [hereinafter WASHINGTON'S FIRST CONSTITUTION]. See also Meany, *Washington's First Constitution*, 1878, 9 WASH. HIST. Q. 68 (1918-19) [hereinafter Meany]. Almost 73% of the territorial electorate approved a proposition to form the state constitution and government, and 15 citizens assembled in convention in Walla Walla to draft the constitution's text. Messages, *supra* note 44, at 199, 213 (reports of Gov. Elisha P. Ferry to the legislature on Oct. 3, 1877 and Oct. 6, 1879, respectively).

73. See *supra* note 32 and accompanying text (emphasis added).

74. WASHINGTON'S FIRST CONSTITUTION, *supra* note 72, at art. v., § 23.

75. *Id.*

76. Meany, *supra* note 72, at 68 n.8.

77. Sullivan, *supra* note 1, at 32.

rate and proclaimed by Governor Ferry on December 28, 1878.⁷⁸ Unfortunately, though, Washington failed to gain acceptance into the Union.⁷⁹ What it needed most to become a state in 1878 was people, not a statement of principles. Congress required new states to have a population equal to the ratio for House members at the proposed time of entry.⁸⁰ Just before the delegates met in Walla Walla, however, the governor noted that the population of Washington Territory was less than one-half the required number.⁸¹

It was not for lack of trying that the population necessary for statehood was inadequate. Ironically, if the railroad had not suffered delays and reversals during the early 1870s, there would likely have been no problem. In any event, the outcome of the vote on the state constitution provides some indication of the priorities of at least the voting part of the population in 1878. If anyone was really hostile to the proposed alien land disability or the limitation on farm leases, there was no indication of it.

2. Alien Land and Foreign Corporation Laws—1886

Real restrictions in the landholding rights of aliens in Washington Territory finally appeared in the mid-1880s with the enactment of two laws, one aimed specifically at aliens and the other at foreign corporations, whether domestic or alien-controlled. While both laws were the result of a growing population and the demand for jobs and land, the measure which dealt with the landholding rights of individual aliens had a decidedly racist tenor.

a. Unemployment and Bigotry Influence the Alien Land Law

The change in Washington's alien land law grew out of population pressures coupled with rising unemployment induced by poor economic conditions in the early 1880s and by completion of the Northern Pacific Railroad's connection to Puget Sound. By 1885, the official population of the territory was nearly 130,000, almost twice what it had been only five

78. *Messages, supra* note 44, at 214 (report to the legislature on Oct. 6, 1879).

79. *Id.*

80. *Id.* at 200 (report of Gov. Elisha P. Ferry to the legislature on Oct. 3, 1877).

81. *Id.*

years before.⁸² At that time, approximately 3,200 Chinese lived in the territory—certainly not a large number in proportion to the rest of the population, yet a significant increase over the less than 300 Chinese who called Washington Territory home in 1870.⁸³ Economic recessions between 1882 and 1885 forced thousands of white industrial workers from their jobs in mines and factories,⁸⁴ and large numbers of Chinese laborers became unemployed when railroad construction ended in 1883.⁸⁵ Tension developed when the two groups inevitably competed for the few available jobs, jobs that whites normally avoided in good times because the work was undesirable, low-paying, or both. Chinese laborers had always been willing to work at such jobs: they culled the tailings of the placer mines after other miners gave up looking;⁸⁶ they cleaned fish in salmon canneries;⁸⁷ and, they prepared the route for the railroad switchbacks over the mountains at Stampede Pass in the dead of winter.⁸⁸ Not only did the Chinese take on the nastier jobs in society, they worked for much lower pay than whites—a boon to employers, especially in bad times.⁸⁹

The displacement of whites in the labor market engendered further animosity in those people who were already racially intolerant of the Chinese. There had been resentment of Chinese gold miners in the mid-1860s, as evidenced by the Chinese coolie "police tax."⁹⁰ However, the vein of hatred ran deeper in the 1880s. "John Chinaman," sometimes less lovingly called "chink,"⁹¹ was loathed for his native culture, his lifestyle, and his color. The popular perception was that he was immoral, diseased, and incapable of being assimilated into soci-

82. *Id.* at 248 (report of Gov. Watson C. Squire to the legislature on Dec. 9, 1885). Apparently, there were flaws in the census-taking techniques; Governor Squire noted that a properly conducted census would have shown the population in 1885 to be approximately 175,000. *Id.* at 249.

83. C. SCHMID, C. NOBBE & A. MITCHELL, *NONWHITE RACES—STATE OF WASHINGTON* 20 (1968) [hereinafter SCHMID]. See also *REPORT OF THE GOVERNOR OF WASHINGTON TERRITORY TO THE SECRETARY OF THE INTERIOR, 1885*, at 5 (Gov't Printing Office 1885) (report by Gov. Watson C. Squire).

84. SCHMID, *supra* note 83, at 20. See also CHOW, *supra* note 57, at 30.

85. SCHMID, *supra* note 83, at 20.

86. See *supra* note 58.

87. AVERY, *supra* note 45, at 261.

88. HUNT & KAYLOR, *supra* note 70, at 278-79.

89. *Id.* at 296.

90. See *supra* notes 57, 59 and accompanying text.

91. See HUNT & KAYLOR, *supra* note 70, at 292. See also AVERY, *supra* note 45, at 261.

ety.⁹² Although many whites knew the Chinese as hardworking launderers, restaurant workers, and domestic servants, others considered them to be opium-smoking gamblers, suited only for the most menial labor.⁹³

Of course, Washington Territory was not operating in a vacuum with respect to anti-Chinese attitudes, whether those feelings were the product of labor competition or outright racism. California and Oregon had been exposed to problems related to large numbers of Chinese immigrants decades before their northern neighbor. A brief look at their laws not only illustrates the reactions of both states with respect to the landholding rights of Chinese immigrants, but also helps to put the later discussion of Washington's situation in perspective.

i. California

The first Chinese to enter California arrived in the 1840s and included common laborers, servants, and businessmen.⁹⁴ Initially, the numbers were small, only about 300 in 1849, but they increased significantly following the gold rush, so that by 1870 there were 49,277 Chinese in California.⁹⁵ By 1880, the numbers had grown to 71,132, representing a growth rate of more than forty-four percent.⁹⁶ Over the next ten years, however, the growth in the Chinese population was stanchied; the 1890 census recorded only 72,472 Chinese—an increase of less than two percent since 1880.⁹⁷ This was due, in no small part, to racial intolerance and violence that began during the early days of immigration and continued for generations.⁹⁸ Anti-Chinese laws were common. For example, in an 1854 ruling, the California Supreme Court forbade Chinese from giving testimony in court.⁹⁹ A “police tax” was enacted in 1862,¹⁰⁰ and a San Francisco ordinance in 1880 discriminated against Chinese laundry operators.¹⁰¹ Besides being poorly treated under

92. See CHOW, *supra* note 57, at 30.

93. HUNT & KAYLOR, *supra* note 70, at 296-98.

94. CHOW, *supra* note 57, at 19.

95. *Id.* at 19, 32. By contrast, Washington Territory recorded only about 240 Chinese inhabitants in 1870. See *supra* note 83 and accompanying text.

96. CHOW, *supra* note 57, at 32.

97. *Id.*

98. See *id.* at 29-32.

99. *Id.* at 31.

100. *Id.*

101. See generally *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). The ordinance, which was declared unconstitutional, required city approval for the operation of laundries in

the law, the Chinese were often brutalized by a generally hostile white population.¹⁰² There were anti-Chinese riots in several places, including Los Angeles, during the 1870s and expulsions from thirty-five communities during a four-month period in early 1886.¹⁰³

Surprisingly, it was not until 1879 that California's alien land law, at least in its constitution, reflected the discrimination that was otherwise evident. The state's first constitution, adopted in 1849, guaranteed to foreigners who were "bona fide residents" the same rights in land enjoyed by native-born citizens.¹⁰⁴ This constitutional declaration of rights, without the requirement of bona fide residency, was made effective by section 671 of the Civil Code of 1872.¹⁰⁵

When the constitution was rewritten in 1879, the Chinese were seemingly disabled by new language which extended land rights to foreigners of the "white race or of African descent" who were eligible to become United States citizens.¹⁰⁶ However, the Civil Code of 1872 continued to be effective because the constitution operated only to grant minimum rights that the legislature could not legally deny.¹⁰⁷ In any event, the 1879 Constitution reflected the desire of Californians to inhibit further Chinese immigration and to force out those already there. An enabling statute for the repressive alien land policy was apparently unnecessary: the treatment the Chinese received in California and the opportunity to migrate elsewhere provided ample incentives to move on.

other than stone or brick buildings. Since laundries were constructed of wood, the effect of the ordinance was to deprive the Chinese of the right to operate laundries. See *id.*

102. CHOW, *supra* note 57, at 31.

103. *Id.* at 37.

104. CALIF. CONST. of 1849 art. I, § 17. See also REPORT OF THE DEBATES IN THE CONVENTION OF CALIFORNIA, ON THE FORMATION OF THE STATE CONSTITUTION, IN SEPTEMBER AND OCTOBER, 1849, app. at V (J. Browne ed. 1850).

105. McGovney, *supra* note 1, at 25. The code provided: "Any person, whether citizen or alien, may take, hold, and dispose of property, real and personal, within this State." *Id.* (citing 1873-74 Cal. Laws 218).

106. CALIF. CONST. art. I, § 17 (1879, amended 1954, repealed 1974).

107. McGovney, *supra* note 1, at 25. The "minimum rights" guaranteed by California's Constitution meant that the state legislature could not deny property rights to aliens who were bona fide residents of white or African descent, but it could give greater property rights to all aliens or at least grant equal rights to other aliens. *Id.*

ii. Oregon

Oregon also had its share of Chinese immigrants. They were attracted, as were those who went to Washington, by work in the gold fields, canneries, and in railroad construction.¹⁰⁸ By 1870, Oregon was home to more than 2,300 Chinese.¹⁰⁹ Ten years later, with 9,510 Chinese inhabitants, Oregon was second only to California in terms of its Chinese population.¹¹⁰

In Oregon, the Chinese confronted the same lack of respect they had experienced elsewhere in the West: they were tolerated with disdain, reviled, and physically abused with alacrity. Anti-Chinese treatment ranged from legal forms of harassment to racial epithets and violence. The Oregon Legislature enacted a tax law in 1862 which required Chinese to pay an annual fee to be used by the county of residence.¹¹¹ Politicians and journalists sometimes accused the Chinese of being worthless to society.¹¹² More often, the hostility took the form of racial slurs and the swift kick of a sheriff's boot, but occasionally lives were lost, as in the massacre of a group of Chinese miners by outlaws on the Snake River in 1872.¹¹³

With respect to the land rights of aliens, most notably the Chinese, Oregon's Constitution of 1859 was not as egalitarian as the 1849 California Constitution. The Oregon Constitution gave "white foreigners" the same rights in land as native citizens.¹¹⁴ It was particularly blunt with regard to the land rights of future Chinese immigrants: "No Chinaman, not a resident of the state at the adoption of [this] constitution, shall ever hold any real estate or mining claim. . . ."¹¹⁵ Whether or not this constitutional provision was of any consequence to the average Chinese, the realities were probably not too severe with respect to real estate (homes, small businesses, and croplands). Much confusion, however, was generated by the legal handling of Chinese mining claims.

108. CHOW, *supra* note 57, at 33.

109. *Id.* at 32.

110. *Id.*

111. C. EDSON, *THE CHINESE IN EASTERN OREGON, 1860-1890*, at 10 n.6 (1974) (citing Act of Oct. 15, 1862, 1845-64 Ore. Laws 815-16 (Deady ed. 1866)) [hereinafter EDSON].

112. *See id.* at 42.

113. *Id.* at 43, 51.

114. ORE. CONST. art. I, § 31 (1859, repealed 1970).

115. ORE. CONST. art. XV, § 8 (1859, repealed 1946).

On the one hand, the State of Oregon, despite its constitutional language, continued to operate with essentially the same alien land statutes it had enacted as a territory. In this respect, it may have established a pattern for California¹¹⁶ and Washington¹¹⁷ to follow concerning constitutional grants of minimum rights and subsequent statutory implementation. Oregon's 1854 alien land law, which apparently served as Washington's statutory model in 1864, provided all aliens with the same land rights as native citizens.¹¹⁸ An amendment in 1872 added a clause which extended the rights to any foreign corporation, whether incorporated elsewhere in the United States, or in any foreign country.¹¹⁹ Conceivably, a Chinese laundry or shop operator was able to own business property and a home without running afoul of the statutory law.

On the other hand, the legal situation was quite confusing for those Chinese in Oregon who desired to own mining property. Certain Chinese were disabled from owning mining claims because of laws passed in 1860 and 1866. The 1860 law required licensing and taxation of Chinese miners, but only those who were in the state prior to 1859 were permitted to be licensed.¹²⁰ According to the 1866 law, Chinese not born in the United States were not permitted to mine in Oregon unless licensed under the act.¹²¹ This provision satisfied the fourteenth amendment's requirement of equal protection for the property rights of American-born Chinese, but made no mention of the rights of those Chinese who resided in Oregon before 1859. Presumably, given the state constitutional disability imposed on Chinese miners, those Chinese who were not American-born and those who arrived in Oregon after 1859 were proscribed from owning mining claims.¹²²

The reality, however, was sometimes different. Regardless of the state constitution and statutes, Oregon's counties usually preferred to collect licensing revenues rather than to quibble over when or how a particular Chinese miner entered the

116. See *supra* note 107 and accompanying text.

117. See *infra* notes 242-43 and accompanying text.

118. See *supra* note 33 for the text of the Oregon statute.

119. Act of Oct. 4, 1872, 1872 Ore. Laws 10. Oregon's statutory alien land law was changed in 1923 to disable aliens ineligible for citizenship and corporations in which aliens were the majority capital stockholders. 1923 Ore. Laws 145.

120. EDSON, *supra* note 111, at 45 nn. 15 & 16 (citing Act of Oct. 19, 1860, 1858-60 Ore. Laws 49-52).

121. *Id.* at 46, n.18 (citing Act of Oct. 24, 1866, 1866-72 Ore. Laws 41-46).

122. *Id.* at 46. See *supra* note 115 and accompanying text.

state.¹²³ Adding to the legal confusion, this pragmatic approach was not always followed in certain mining districts of eastern Oregon. Various local acts, passed between 1862 and 1872, appeared to deny Chinese land rights in mining property without regard for conditions of residence or birth.¹²⁴ The local acts were probably observed about as fervently as those of the state, but for a different reason— exhausted mining claims could be unloaded on the Chinese as long as no one complained.¹²⁵ If a white miner was unable to get gold out of the ground, he could always mine a Chinese purse.

Therefore, except for opportunistic incidents, the white population of Oregon attempted to achieve the same results sought by the Californians in the early 1850s: to prevent more Chinese from entering the state and to persuade those already in residence to move on. Whether their efforts were successful is debatable. Between 1860 and 1880 the Chinese increased both in numbers and as a percentage of the total population; the census of 1890 showed only a small gain in numbers but reflected a drop in percentage.¹²⁶ Although it is difficult to say what impact either the alien land law or bigotry, taken separately or together, may have had on Oregon's Chinese population, apparently neither factor was controlling. More important factors were the fluctuating nature of the gold mining industry and the development of the railroads in the American West.¹²⁷ The Chinese, probably not unlike laborers of other races, followed the jobs, and there was an abundance of jobs in Washington Territory.

iii. Washington Territory

Although the promise of work lured many Chinese to Washington Territory, no friendlier treatment awaited them than they had received in Oregon or California,¹²⁸ especially when they were hired for jobs desired by economically-pressed whites. Competition for scarce jobs along with ever-present

123. *Id.* at 48.

124. *See id.* at 49 (citing Auburn, Ore., Act of May 2, 1862, art. VI; John Day's Mining Dist., Ore., Act of Jun. 25, 1862, art. XIV; and Eagle Mining Dist., Ore., Act of Jan. 27, 1872, art. III).

125. *Id.* at 50.

126. *Id.* at 33.

127. *See id.* at 32. Also, after 1882, federal law prohibited further immigration by Chinese laborers. Chinese Exclusion Act of May 6, 1882, ch. 126, § 1, 22 Stat. 58, 59. *See infra* note 143.

128. *See generally supra* notes 90-93 and accompanying text.

racial animosities occasionally provided a catalyst for violence, such as in the Seattle and Tacoma riots of late 1885 and early 1886. In November of 1885, labor organizations and rabble-rousers, with the sympathy of the Pierce County sheriff, succeeded in forcing Tacoma's Chinese residents to leave town.¹²⁹ Their homes were then put to the torch.¹³⁰ At the same time, there was trouble in Seattle, but the sheriff and some of the nobler members of the community were reluctant to see that city's Chinese suffer the same fate.¹³¹ The situation was sufficiently threatening for the governor to request the assistance of federal troops to prevent civil disorder.¹³² The troops arrived in Seattle on November 8, restored the peace, and were soon withdrawn.¹³³ A month later, the governor suggested that the state territorial legislature petition Congress to amend the Chinese Exclusion Act and to negotiate treaty changes with China to "protect the American working [man] from *extended* competition with Chinese cheap labor."¹³⁴ The territorial lawmakers complied and also considered enacting several pieces of discriminatory legislation, including a racially-restrictive alien land law.¹³⁵

On January 29, 1886, the territorial legislature passed a new alien land law which disabled those aliens incapable of becoming citizens of the United States from enjoying the same land ownership rights available to citizens.¹³⁶ The law was the only one of several proposed anti-Chinese measures that passed.¹³⁷ The legislators also considered a law which would have given cities the authority to deny the Chinese licenses for laundries;¹³⁸ other legislation would have prohibited the hiring of ineligible aliens in either private or public jobs.¹³⁹ However,

129. AVERY, *supra* note 45, at 198.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Messages, supra* note 44, at 262 (report of Gov. Watson C. Squire on Dec. 9, 1885) (emphasis in original). Governor Squire suggested the petition state that the Chinese threatened to deter settlement by a "desirable class of immigrants," and to "lower the dignity and prosperity of labor itself." *Id.*

135. AVERY, *supra* note 45, at 198-99.

136. Act of Jan. 29, 1886, 1885-86 Wash. Laws 102, *repealed by* Act of Feb. 3, 1927, ch. 56, § 1, 1927 Wash. Laws 45.

137. AVERY, *supra* note 45, at 198-99.

138. *Id.* at 198. San Francisco, California, also tried to deny the Chinese the right to operate laundries. *See supra* note 101 and accompanying text.

139. AVERY, *supra* note 45, at 198.

after passage by the House, only the alien land law survived Council scrutiny because of the dubious constitutionality of the other measures.¹⁴⁰

As a result of the new law, the Chinese were faced with an alien land disability in Washington Territory's waning days, which, unlike the law in California and Oregon, was unequivocal. Indeed, Washington Territory's 1886 alien land law went a step beyond even the old common law disability. The common law at least permitted aliens, subject to "office found," to take real property by act of the parties.¹⁴¹ The 1886 alien land law prohibited such acquisitions by aliens incapable of becoming citizens.¹⁴² Because Chinese immigrants were specifically precluded from citizenship under federal law,¹⁴³ their ability to own property was directly affected by the Washington alien land law. It is unlikely, however, that the change in the alien land law had much influence on the territory's Chinese residents; they were probably more influenced by racial violence and by federal laws that prohibited immigration by Chinese laborers.¹⁴⁴

Unfortunately, white hostility was not mollified by the knowledge that the Chinese would have no land rights in Washington. In February 1886, after attempts to pass labor-restrictive laws failed, anti-Chinese elements incited mob action against the Chinese who remained in Seattle following the earlier disturbances.¹⁴⁵ Chinese residents were marched to the docks to board a San Francisco-bound ship, but were later returned to their homes, encircled by a protective ring of local home guards.¹⁴⁶ Several rioters were hurt, one fatally, while

140. *Id.* at 199 (the Council was the territorial equivalent of a senate).

141. *See supra* note 1 and accompanying text.

142. *See supra* note 136 and accompanying text.

143. Chinese Exclusion Act of May 6, 1882, ch. 126, § 14, 22 Stat. 58, 61. The Act was an expression of the federal government's view that the immigration of Chinese laborers was a danger to the "good order of certain localities. . . ." *Id.* preamble, 22 Stat. 58. Except for certain exemptions for Chinese who entered the country before specified dates and treaty exceptions for nonlaborers, the Act suspended the immigration of Chinese laborers for a period of ten years. *Id.* at §§ 1-6, 22 Stat. 58, 59-60. The Act also prohibited state and federal courts from admitting Chinese to citizenship. *Id.* at § 14, 22 Stat. 58, 61. Also ineligible were those aliens who were not white or who were not of African descent. *See* Act of Mar. 26, 1790, ch. 3, 1 Stat. 103 (eligibility for free white persons); Act of July 14, 1870, ch. 254, § 7, 16 Stat. 254, 256 (eligibility for persons born in Africa or of African descent).

144. *See* SCHMID, *supra* note 83, at 20.

145. Avery, *supra* note 45, at 199.

146. *Id.*

trying to break through the ring and, once again, the governor resorted to federal aid; this time the troops came in larger numbers and stayed in Seattle for months.¹⁴⁷ The overt violence, if not the xenophobia and racial animosity, subsided in time.

b. *Landholding Disabilities of Foreign Corporations*

The 1886 anti-Chinese alien land law was not the only manifestation of Washington's xenophobic attitude towards the acquisition of land by aliens. Shortly after passing the Alien Land Act, the territorial legislature enacted another law, which dealt with the ownership of property by foreign corporations. The enactment of this second law was apparently motivated by forces similar to those faced by the delegates to the 1878 constitutional convention.

The Act of February 3, 1886, amended the 1875 foreign corporations law by placing acreage and other limitations on foreign corporate land holdings.¹⁴⁸ Foreign corporations, whether incorporated abroad or merely in another part of the United States, were limited to owning 5,000 acres of land.¹⁴⁹ The 1886 amendment also prohibited the operation in the territory of any foreign corporations specifically organized to trade in land.¹⁵⁰ Furthermore, rigid filing and recording requirements were included, which left little room for a corporation to disguise its place of incorporation.¹⁵¹

With this new law, Washington Territory addressed two concerns of its mostly agricultural population. The first was a fear of absentee landlordism with its Scully estates and threats of feudalistic oppression.¹⁵² Anglophobia was not uncommon, especially among farmers, and the notoriety of Scully's absentee-landlord practices helped galvanize anti-British farmers to push for legislative relief.¹⁵³ Likewise, farmers resented Brit-

147. *Id.*

148. Act of Feb. 3, 1886, § 1, 1885-86 Wash. Laws 87, *repealed in part by* 1889-90 Wash. Laws 288-91.

149. *Id.* at § 1. The precise source of the acreage figure is unknown, but it did exist elsewhere. A Pennsylvania law, enacted in 1861, permitted resident aliens to purchase up to 5,000 acres of land. Morrison, *Limitations on Alien Investment in American Real Estate*, 60 MINN. L. REV. 621, 624 n.15 (1976).

150. Act of Feb. 3, 1886, § 1, 1885-86 Wash. Laws 87, *repealed in part by* 1889-90 Wash. Laws 288-91.

151. *Id.*

152. *See supra* note 77 and accompanying text.

153. Sullivan, *supra* note 1, at 31-32.

ish cattle interests that controlled several million acres across a number of western states and British mortgage companies that also held a sizable amount of farm land.¹⁵⁴ The second concern focused on the increasing price of land, which was aggravated by rapid population growth. Land speculation in the American West was rampant.¹⁵⁵ Large-scale land purchases by powerful investors, both in the United States and overseas, caused absurdly high prices.¹⁵⁶ The net effect for many farmers was a reduction in the availability of affordable land.¹⁵⁷ Washington Territory had plenty of desirable land, much of it owned by the Northern Pacific Railroad by virtue of its federal land grants.¹⁵⁸ In addition, the population was growing rapidly, aided by the finally completed rail connection to the East. By 1885, for example, almost 130,000 people lived in Washington Territory, a dramatic increase compared with the 1883 tally of 92,508.¹⁵⁹ Hence, the situation was ripe for exploitation by rich investors, principally from the Eastern United States but also from Europe.

It is hard to say what effect Washington's foreign corporation land disability had during the remaining days before statehood. Given the rather specific limitations and stiff filing and reporting requirements, foreign corporations were presumably deterred in their efforts to exploit the land, either through absentee landlordism or large-scale speculation. Also, the law may have had an unsettling effect on mining interests held by aliens.¹⁶⁰ As with the Chinese, however, the situation of foreign corporate investors was probably more affected by federal law than by Washington's territorial enactments. In the case of the Chinese, federal law prohibited immigration and naturalization. As to investors, the law disabled all corporations not created "by or under the laws of the United States or of some State or Territory" and domestic corporations in which aliens held more than twenty percent of the stock.¹⁶¹

154. *Id.* at 31.

155. See HUNT & KAYLOR, *supra* note 70, at 340.

156. See *id.* See also Sullivan, *supra* note 1, at 31.

157. See AVERY, *supra* note 45, at 195.

158. *Id.* at 195-96. The Northern Pacific Railroad acquired 47 million acres of land in Washington through public land grants. *Id.* at 195.

159. *Messages*, *supra* note 44, at 248 (report by Gov. Watson C. Squire to the legislature on Dec. 9, 1885). Governor Squire believed the population was actually closer to 175,000. See *supra* note 82 and accompanying text.

160. See Sullivan, *supra* note 1, at 37.

161. Territorial Land Act of Mar. 3, 1887, ch. 340, § 2, 24 Stat. 476, 476-77. This Act

Whether related to the rights of individual aliens or to those of foreign corporations, the two forms of the territory's alien land disability have historical value; both laws provide a reference point for the next phase of Washington's alien land law development: the drafting of the Constitution of 1889.

IV. THE STATE OF WASHINGTON

This section begins with a chronological treatment of the development of the alien land rights provision of Washington's Constitution of 1889 and, for the sake of historical perspective, continues with a brief discussion of subsequent legislative enactments and constitutional amendments. The section ends with a cumulative account of the judicial opinions that gave substance to Washington's various alien land laws.

A. *The Constitution of 1889 and Statehood*

1. Constitutional Convention

The Washington State Constitution was drafted during the summer of 1889 by a convention of delegates elected in May of that year.¹⁶² The election was held pursuant to section 3 of the Enabling Act which Congress approved on February 29, 1889, for the purpose of bringing Washington and three other western states into the Union.¹⁶³ The seventy-five delegates represented a cross section of the territory's population.¹⁶⁴ Among their ranks were thirty-four professionals including twenty-seven lawyers, one of whom was an accomplished politician and territorial supreme court justice.¹⁶⁵ Twenty of the delegates represented agricultural interests and four were involved in mining.¹⁶⁶ Also participating in the convention were merchants, bankers, real estate dealers, lumbermen, and a sprinkling of men from other areas of interest in the territory.¹⁶⁷ Most of the delegates were immigrants from other

also caused a furor in mining areas because it threatened the mining industry's capital from foreign investors. Sullivan, *supra* note 1, at 37.

162. EVERGREEN, *supra* note 61, at 48.

163. Enabling Act of Feb. 22, 1889, ch. 180, § 3, 25 Stat. 676 (the other states were South Dakota, North Dakota and Montana).

164. B. ROSENOW, THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION—1889 at iv (1962) [hereinafter JOURNAL].

165. *Id.* at 465-90. Actually, only 21 of these were practicing lawyers; the others had been lawyers at one time but were engaged in other businesses in 1889. See *id.*

166. *Id.*

167. *Id.*

states and some originally came from other countries. Only one delegate was native to what one of them referred to as "Puget Sound country."¹⁶⁸ The delegates began their work in Olympia on July 4 and finished on August 22.¹⁶⁹ On October 1, 1889, the product of their efforts was ratified by the people.¹⁷⁰ Thus was born a constitution, which became effective with the proclamation of Washington's statehood on November 11, 1889.¹⁷¹

Unfortunately, from a historical perspective, no full text of the convention's speeches and arguments exist to help determine the source of various constitutional provisions.¹⁷² The proceedings were recorded by court reporters, but their untranscribed shorthand notes were lost.¹⁷³ However, the delegates kept minutes in which they recorded the motions and votes of the proceedings.¹⁷⁴ The minutes, written in longhand, survived to provide at least some insight into the development of the constitution.¹⁷⁵ Other material also exists to help the historian: the newspapers of the region reported on the progress of the convention, and the comments of a few delegates are available for study in articles which were written some years after the fact.¹⁷⁶

One of the delegates who commented on the drafting of the constitution noted that it contained little material that had not been expressed elsewhere.¹⁷⁷ Although they apparently referred occasionally to statutory language, the framers gener-

168. *Notes on the Constitutional Convention*, 4 WASH. U. ST. HIST. SOC. 276, 277 (1913) (written by one of the delegates to the convention—George Kinnear) [hereinafter Kinnear]. Fourteen of the delegates were born outside the United States, but most had lived elsewhere in the United States before migrating to Washington; nine were from the British Isles (mostly Scotland), two were born in Canada and three were from Germany. JOURNAL, *supra* note 164, at 465-90.

169. JOURNAL, *supra* note 164, at 1, 464.

170. EVERGREEN, *supra* note 61, at 48.

171. *Id.*

172. Beardsley, *Desiderata Pertaining to Selected Legal Materials of Washington*, 18 WASH. L. REV. 51, 52 (1943).

173. *Id.* The minutes were destroyed after the state legislature failed to pay for the reporters' services. *Id.*

174. *Id.*

175. JOURNAL, *supra* note 164, at vii.

176. *Id.* at vii & 931. See also Utter, *Perspectives on State Constitutions*, 7 U. PUGET SOUND L. REV. 491, 512-13 & nn. 111 & 113 (1984). The following discussion incorporates newspaper accounts only to the extent that they were used by Rosenow to compile the JOURNAL.

177. *The Constitution of the State and its Effects Upon Public Interests*, 4 WASH. U. ST. HIST. SOC. 281 (1913) (written by one of the delegates to the convention—Theodore L. Stiles).

ally relied on constitutional models available from a number of sources.¹⁷⁸ Careful attention was given to the proposed constitution drafted in 1878 in Walla Walla¹⁷⁹ and to a model constitution which was published by the *Portland Oregonian* on July 4, 1889.¹⁸⁰ Additionally, provisions were sometimes copied from existing state constitutions¹⁸¹ and, besides referring to constitutional models, the delegates relied on their own experiences and originality to accomplish their task.¹⁸²

It is not known with absolute certainty to what extent any particular model was used in drafting Washington's constitutional provision regarding alien landholding rights.¹⁸³ Apparently, the delegates did not rely upon the proposed constitution of 1878, but the model constitution may have provided some inspiration.¹⁸⁴ One historian suggested the measure was similar in part to article XV, section 8 of the Oregon Constitution.¹⁸⁵ This may be true to the extent that both could be construed to have been anti-Chinese, but otherwise, there is no reason to believe that the Oregon provision was antecedent to Washington's. There is simply no similarity in language or structure, and historical analysis shows that the two provisions resulted from different motivating causes.¹⁸⁶ Actually, it

178. JOURNAL, *supra* note 164, at v.

179. *Id.*

180. *Id.* (the draft was authored by Judge William Lair Hill, who had practiced law in both Oregon and California).

181. *Id.* As an easy example, one provision stated: "The legislature shall never authorize any lottery or grant any divorce." WASH. CONST. art. II, § 24 (1889). This language was identical to that contained in article 4, § 24 of the Wisconsin Constitution of 1848 and essentially the same as that in the Washington proposed constitution of 1878 (the latter included the words: "the sale of lottery tickets shall be by law."). JOURNAL, *supra* note 164, at 537 n.38. Whether for replication or inspiration, the delegates relied mostly on the Constitutions of Illinois, California, Indiana, Michigan, Pennsylvania, New York, Georgia, and Kentucky, in that particular order. Kinnear, *supra* note 168, at 278.

182. See JOURNAL, *supra* note 164, at v.

183. See A. BEARDSLEY, THE SOURCES OF THE WASHINGTON CONSTITUTION AS FOUND IN THE CONSTITUTIONS OF THE SEVERAL STATES at xvi; WASH. CONST. app. (1939) [hereinafter BEARDSLEY].

184. See WASHINGTON'S FIRST CONSTITUTION, *supra* note 72, art. V, § 18 (citizens and resident aliens treated alike); see also Hill, *Washington: A Constitution Adapted to the Coming State*, The [Portland] Morning Oregonian, July 4, 1889, art. I, § 29 at 22 (typed edition available from U. of Wash., Seattle) (resident foreigners of any race eligible to become citizen, treated like citizens).

185. *Supra* note 183, at xvi. See *supra* note 115 and accompanying text.

186. The Oregon Constitution's alien land rights provision patently suggests a racial motivation. See *supra* note 115 and accompanying text. The following discussion shows that while Washington's constitutional provision may have obliquely permitted discriminatory application, its underlying motivations went beyond racial concerns.

appears that the Washington alien land provision was mostly a product of the creativity of its authors combined with text derived from existing federal statutes.¹⁸⁷

2. Alien Land Disability Section—Development

The subject of alien land rights first came before the convention on July 10, 1889, in a proposition by Thomas C. Griffiths, a lawyer from Spokane Falls in eastern Washington.¹⁸⁸ Griffiths proposed that alien land ownership be prohibited, except for acquisition by inheritance.¹⁸⁹ His exhortative phraseology began by exclaiming: "The ownership of lands by aliens is detrimental to the best interests of a state. . . ."¹⁹⁰

While his motivation for the proposition was not recorded in the minutes, it appears that Griffiths' concern centered on absentee landlordism and land speculation by foreign investors. This can be inferred from the agricultural nature of the district he represented and from his statements in the minutes. Noting that foreign syndicates owned some twenty-one million acres of American land, Griffiths argued before the Committee of the Whole that America's land should be protected for its citizens.¹⁹¹ Additionally, the inheritance exception suggests that Griffiths' version of the disability was not aimed at the small property holder.

Griffiths' proposition and another of unrecorded content, submitted by attorney J. J. Weisenburger of Whatcom, were referred to the committee concerned with state, school and granted lands.¹⁹² Both were subsequently transferred to the Legislative Committee on July 17, where they were transformed into the finished constitutional provision.¹⁹³ That Committee submitted a report on August 5, which contained two

187. See JOURNAL, *supra* note 164, at v.

188. *Id.* at 41, 474. Spokane Falls, located in the wheatlands near the Idaho border, was renamed Spokane in 1890. EVERGREEN, *supra* note 61, at 250.

189. JOURNAL, *supra* note 164, at 41.

190. *Id.*

191. *Id.* at 551. According to an article read before the Committee by Griffiths, the acreage was owned by thirty foreign landlords. *The Origin of the Constitution of the State of Washington*, 4 WASH. HIST. Q. 227, 272 (1913).

192. JOURNAL, *supra* note 164, at 107. Whatcom, now known as Bellingham, is located north of Puget Sound on Bellingham Bay about 18 miles south of the Canadian border. See generally EVERGREEN, *supra* note 61, at 175-83. Prior to 1889, its inhabitants tried to establish several different industries, including lumbering, coal and gold mining, and a salmon cannery. *Id.*

193. JOURNAL, *supra* note 164 at 111.

sections related to alien land ownership.¹⁹⁴ The first section consisted of Griffiths' proposition, supplemented by language which would permit aliens to acquire land, not only by inheritance, but also "in good faith in the ordinary course of justice in the collection of debts heretofore created . . . [but not] in trust . . ." ¹⁹⁵ Furthermore, the same section provided that the alien disability would not apply to land related to the production of valuable minerals.¹⁹⁶ The second section presented by the Legislative Committee's report extended the alien disability to those corporations held, in the majority, by aliens.¹⁹⁷

The minutes shed no light on the source of these changes to Griffiths' original wording. The creditor-oriented modification in the first section suggests that it may have come from someone who had the support of foreign mortgage companies that operated in the territory;¹⁹⁸ who put the proposition forward is uncertain. The mineral lands exceptions was probably promoted by former Welsh immigrant Morgan Morgans, a mining executive from Black Diamond, who served on both the Legislative Committee and the committee that dealt with mining interests.¹⁹⁹ His supporting vote on a later amendment indicates that Morgans favored alien land ownership.²⁰⁰ The originator of the alien-held corporation section is open to conjecture, at least based on the background and voting record of all the Legislative Committee members.²⁰¹ Apparently, the creditor-relief clause and the alien-held corporation section were inspired by, if not copied verbatim from, the Territorial Land Act of 1887.²⁰²

The next action on the alien land provision occurred on August 8, when the Legislative Committee submitted a minority report in which one of its members objected to the alien

194. *Id.* at 246.

195. *Id.*

196. *Id.*

197. *Id.*

198. *E.g.*, the British-held Oregon Mortgage Company. See C. LEWIS, AMERICA'S STAKE IN INTERNATIONAL INVESTMENTS 86 (1938). See generally *Oregon Mtge. Co. v. Carstens*, 16 Wash. 165, 47 P. 421 (1896).

199. JOURNAL, *supra* note 164, at 481. Black Diamond is located in the mining region of King County east of Seattle. See EVERGREEN, *supra* note 61, at 349.

200. The defeated amendment was proposed by Theodore L. Stiles. See *infra* notes 220-24 and accompanying text.

201. For a list of members of the Legislative Committee, see JOURNAL, *supra* note 164, at 247. For biographical information, see *id.* at 465-90.

202. See Territorial Land Act of Mar. 3, 1887, ch. 340, §§ 1-3, 24 Stat. 476, 476-77.

landholding disability sections altogether.²⁰³ Ritzville farmer and former Scottish immigrant, D. Buchanan, apparently referring to the sections' anti-Chinese connotations, thought the measures were "of doubtful constitutionality, illiberal, exclusive and not in harmony with the spirit of the age."²⁰⁴

The following afternoon, the entire legislative article was presented for consideration by the Committee of the Whole.²⁰⁵ Among the proposals discussed by the delegates regarding alien land disability were a substitute for the entire section and four amendments.²⁰⁶

The adopted substitute section, proposed by Robert Jamieson, was the same as the final text with two exceptions. First, the proposal made no mention of a good faith declaration to become a United States citizen; second, it contained no language permitting aliens to hold land acquired under mortgage.²⁰⁷ Before the section went to final action by the convention, D. J. Crowley, a lawyer from the farming community of Walla Walla, moved successfully to add the mortgage exception.²⁰⁸ The good faith declaration language came later from the floor of the convention.

Jamieson's substitute provided two significant contributions to the section; one stylistic, the other substantive in nature. Stylistically, it made the section more commanding. It began bluntly: "The ownership of lands by aliens . . . is prohibited . . ."²⁰⁹ Thus, Griffiths' original exhortative wording was eliminated.²¹⁰ Substantively, the substitute section helped satisfy mining interests because Jamieson, a Scottish mining engineer from Wilkeson, added properties containing coal and fire clay to those that aliens could hold.²¹¹

An unsuccessful motion to strike the substitute was made

203. JOURNAL, *supra* note 164, at 293.

204. *Id.* See also *id.* at 551. Ritzville is located in central southeast Washington, approximately 60 miles southwest of Spokane. See EVERGREEN, *supra* note 61, at 446.

205. JOURNAL, *supra* note 164, at 301, 550.

206. *Id.* at 550-51.

207. See *id.* at 550.

208. *Id.* at 550. The mortgage exception did not appear in the Territorial Land Act of 1887. See Territorial Land Act of March 3, 1887, ch. 340, 24 Stat. 476, 476-77. Walla Walla is located just a few miles from the Oregon border in the southeastern corner of Washington. See generally EVERGREEN, *supra* note 61, at 289-93.

209. JOURNAL, *supra* note 164, at 549.

210. See *supra* note 190 and accompanying text.

211. JOURNAL, *supra* note 164, at 550. Wilkeson is located in the foothills approximately half-way between Tacoma and Mount Ranier. See generally EVERGREEN, *supra* note 61, at 351-52.

by P.C. Sullivan, a lawyer from Tacoma, who saw no harm in alien landlordism.²¹² Other pro-alien arguments were offered in committee by attorney-delegates from agricultural Eastern Washington. Austin Mires, one of Ellensburg's three delegates, wanted the alien disability section struck altogether, but he expressed no reason for his preference.²¹³ S. G. Cosgrove, the lone representative from Pomeroy, felt that alien land ownership led to reduced interest rates.²¹⁴ Former German immigrant H. F. Suksdorf, who lived in Spangle, expressed his lack of fear of alien land ownership.²¹⁵

The committee also heard arguments against alien land ownership. In addition to Griffiths' comments, noted above,²¹⁶ James Z. Moore, a Spokane Falls lawyer who served as the chairman of the Legislative Committee, expressed concern about the dangers of absentee landlordism.²¹⁷ Apparently sharing the views of Griffiths and Moore were Weisenburger and a Colfax farmer and former lawyer, C. H. Warner, both of whom felt foreign acquisition of property was a great evil.²¹⁸ The traditional values of the alien land disability were alluded to by George Turner, a lawyer from Spokane Falls, and by Thomas T. Minor, a doctor from Seattle.²¹⁹

Following the delegates' arguments, the convention accepted the decision of the Committee of the Whole and entertained three motions for amendment.²²⁰ The first came from Theodore L. Stiles, a lawyer from Tacoma, who proposed that all of the disabling language be scrapped in favor of a clause which would permit aliens to hold up to 640 acres.²²¹ The Northern Pacific Railroad, headquartered in Tacoma, had

212. JOURNAL, *supra* note 164, at 550.

213. *Id.* at 550-51. For Mires' biographical information, see *id.* at 480. Ellensburg is located in central Washington, approximately 25 miles north of Yakima. See generally EVERGREEN, *supra* note 61, at 464-65.

214. JOURNAL, *supra* note 164, at 550. Pomeroy is located in the southeast corner of Washington, approximately halfway between Walla Walla and Pullman. See generally EVERGREEN, *supra* note 61, at 360-62.

215. JOURNAL, *supra* note 164, at 551. Spangle is located about 19 miles south of Spokane. See generally EVERGREEN, *supra* note 61, at 420-21.

216. See *supra* note 191 and accompanying text.

217. JOURNAL, *supra* note 164, at 551.

218. *Id.* For Warner's biographical information, see *id.* at 488. Colfax is located in the southeastern corner of Washington about 10 miles northwest of Pullman. See generally EVERGREEN, *supra* note 61, at 425-26.

219. JOURNAL, *supra* note 164, at 551. For Minor's biographical information, see *id.* at 480; for Turner's biographical information, see *id.* at 488.

220. JOURNAL, *supra* note 164, at 303, 551.

221. *Id.* at 305, 551. For Stiles' biographical information, see *id.* at 485.

been granted alternating 640 acre sections along its right of way by the federal government, and Stiles felt that such alternating sections would prevent the accumulation of larger blocks of land.²²² He also argued in favor of large foreign investments by suggesting that foreigners would be unlikely to go to war with the United States if they stood to lose substantial capital investments in this country.²²³ Stiles' proposal lost on a close vote, thirty to twenty-eight.²²⁴

Another amendment, passed by an unrecorded vote, was proposed by M. M. Godman, a lawyer from Dayton, who served as chairman of the committee concerned with homesteads and property exemptions.²²⁵ Godman was responsible for the section's language which removed the disability from those aliens who would make a good faith declaration of intention to become citizens of the United States.²²⁶ He apparently borrowed from the language of the Territorial Land Act of 1887.²²⁷

The third proposed amendment lost, again by an unspecified count. The amendment was proposed by Addison A. Lindsley, a farmer from Union Ridge, and would have provided that the alien land disability section not upset existing land titles.²²⁸

After consideration of the foregoing amendments and other sections, the delegates passed the complete legislative article by a vote of forty-four to twelve, with nineteen members recorded as absent and not voting.²²⁹ As accepted on August 9, the alien land disability still consisted of two parts: one dealing with aliens in general; the other establishing when a corporation would be considered alien.²³⁰ These provisions were later reduced into one constitutional section, which stated:

222. *Id.* at 550. Regarding the Northern Pacific Railroad and Tacoma, see generally R. SALE, SEATTLE—PAST TO PRESENT 32-34 (1976) [hereinafter SALE].

223. JOURNAL, *supra* note 164, at 550.

224. *Id.* at 305-06, 551.

225. *Id.* at 306, 551. For Godman's biographical information, see *id.* at 473. Dayton is located in southeastern Washington about 25 miles northeast of Walla Walla. See generally EVERGREEN, *supra* note 61, at 364.

226. JOURNAL, *supra* note 164, at 306, 551.

227. See Territorial Land Act of Mar. 3, 1887, ch. 340, § 1, 24 Stat. 476.

228. JOURNAL, *supra* note 164, at 306, 551. For Lindsley's biographical information, see *id.* at 478. Union Ridge was located thirty miles from Portland (direction unknown) on the Columbia River. *Id.* (whether the community continues in existence is unknown).

229. *Id.* at 308.

230. *Id.* at 314.

The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.²³¹

Close examination and comparison of this provision to the alien land law of 1886 reveals that the constitutional framers took an entirely different tack than did the territorial legislators. For example, the 1886 act granted most aliens the same landholding rights that were available to citizens; only those incapable of citizenship were excepted.²³² In contrast, the constitution was far less disabling. It applied only to those aliens who were unable to make a good faith declaration of their intention to become citizens of the United States. Even absent such a declaration, an alien could still acquire land "by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts . . ." ²³³ This language was not present in the 1886 law. The new constitutional provision represented a marked departure from the common law alien land disability, which permitted land acquisition by act of the parties, but did not recognize inheritance of land by aliens.²³⁴ Thus, at its most restrictive level, the constitutional proscription extended to the direct acquisition of land by purchase or gift and to indirect acquisition by trust; it did not, however, totally rule out landholding by aliens, even by those unable to declare their intention to become citizens.

In taking such an approach, the constitution's authors fashioned an alien land provision to address competing concerns. On one hand, they opposed large-scale control of land by aliens, especially by alien-held corporations. On the other

231. WASH. CONST. art. II, § 33 (1889, amended 1950 & 1954, repealed 1966).

232. See *supra* note 136 and accompanying text.

233. WASH. CONST. art. II, § 33 (1889, amended 1950 & 1954, repealed 1966).

234. See *supra* note 1 and accompanying text.

hand, they realized that more immigrants would be needed to populate and work the land, and that the law should accommodate the operation of foreign-held mortgage companies in order to help those immigrants purchase land. Furthermore, the constitutional delegates realized that foreign investment would be necessary to develop Washington's mining industry. By proscribing direct land ownership by nondeclarant aliens other than those who would invest in mining properties, the delegates erected a wall to discourage absentee-landlordism and land speculation. This was accomplished without dampening either the land mortgage industry or the exploitation of mineral resources. At the same time, by excepting those who might in good faith declare their intention to citizenship, the delegates kept the constitutional door open for most aliens to become landowners in Washington. That door, of course, was not open to the Chinese. However, whether by design or otherwise, the other exceptions to the alien land disability gave Washington's Chinese residents a few rights in land that they had lost under the territorial laws of 1886.

It appears that, unlike their territorial predecessors, the constitutional framers were not influenced by anti-Chinese sentiments.²³⁵ The minutes make no mention of the Chinese in the arguments by those opposed to alien land rights.²³⁶ According to one writer, the delegates may have consciously avoided the appearance of bigotry in order to facilitate Washington's acceptance into the Union.²³⁷ However, it seems more likely that the Chinese issue was simply not very important in 1889; by the time the convention met, the Chinese threat to whites in the labor market had generally dissipated.²³⁸ Besides, it is doubtful that the Chinese had ever been significant landowners, especially in agricultural areas.²³⁹ These were people whose jobs were typically low paying, menial, and often

235. Likewise, the framers' motivation differed from that which underlay article XV, § 8 of the Oregon Constitution. See *supra* note 115 & 186 and accompanying text.

236. It is possible, however, that Weisenburger's alien land law proposition, see *supra* note 192 and accompanying text, may have included some form of anti-Chinese language; in another proposition regarding the right to suffrage, he suggested, *inter alia*, that no "native of China . . . ever exercise the privilege of an elector. . . ." JOURNAL, *supra* note 164, at 61.

237. Comment, *Washington's Alien Land Law—Its Constitutionality*, 39 WASH. L. REV. 115, 117 (1964).

238. See REPORT OF THE GOVERNOR OF WASHINGTON TERRITORY TO THE SECRETARY OF THE INTERIOR, 1889, at 39 (Gov't Print'g Off. 1889) (report by Gov. Miles C. Moore) [hereinafter REPORT OF 1889].

239. See *id.* See also HUNT & KAYLOR, *supra* note 70, at 296-98.

transient, and whose homes were mostly found in the waterfront slums of Seattle, Tacoma, and other Puget Sound communities.²⁴⁰ Moreover, Chinese population growth had been substantially deterred by racial violence and the Chinese Exclusion Act.²⁴¹

B. Post-Constitution Alien Land Law—A Brief Overview

Following adoption of the constitution and Washington's admission into the Union, the statutory alien land disability applicable to individuals remained as it had been when enacted by the territorial legislature in 1886.²⁴² As such, it was inconsistent with the minimum rights established by article II, section 33 of the constitution. Nonetheless, the constitution was controlling.²⁴³ Despite the failure to change the alien land law—and suggestive of the principal reasons for the constitutional provision—the new state's legislators acted quickly to repeal and replace the 1886 Foreign Corporations Law with a provision in harmony with the constitution's language. In so doing, they disabled foreign corporations held in the majority by nondeclarant alien stockholders, except for land acquisition under mortgage or in the collection of debts.²⁴⁴ The proscription against landholding by foreign corporations for the sole purpose of dealing in real estate was continued, regardless of alien involvement.²⁴⁵ But, in accord with the constitution, the disability was made inapplicable to the ownership of mining-related lands.²⁴⁶

240. See HUNT & KAYLOR, *supra* note 70, at 297-98.

241. REPORT OF 1889, *supra* note 238, at 39. See also SCHMID, *supra* note 83, at 20. Because of the Chinese Exclusion Act, most Chinese could not legally enter the country and even those who could were barred from attaining citizenship. Chinese Exclusion Act of May 6, 1882, § 14, ch. 126, 22 Stat. 58, 61. See *supra* note 143. As a result of this bar on citizenship, no Chinese could make a good faith declaration of intent to become a citizen as required by section 33 of the Washington Constitution. See *supra* note 231 and accompanying text. While other aliens might also be unable to make such a good faith declaration, see e.g., *infra* notes 282, 283 and accompanying text, the Chinese were the only aliens in 1889 unable to do so by virtue of a specific federal law.

242. See Act of Jan. 29, 1886, §§ 1, 2, 1885-86 Wash. Laws 102, *repealed by* Act of Feb. 3, 1927, ch. 56, § 1, 1927 Wash. Laws 45. However, the legislature enacted a law to quiet title to lands held by aliens prior to adoption of the constitution. Act of Mar. 20, 1895, ch. 140, 1895 Wash. Laws 268. The 1886 alien land act did not contain a similar provision. See Act of Jan. 29, 1886, 1885-86 Wash. Laws 102.

243. See WASH. CONST. art. I, § 29, & art. XXVII, § 2 (1889).

244. Act of Mar. 28, 1890, ch. 9, § 1, 1889-90 Wash. Laws 288.

245. *Id.*

246. *Id.*

1. The Alien Land Bill of 1921

After the constitution's adoption, the next major event to occur in the development of Washington's written alien land law was the enactment of the Alien Land Bill in 1921.²⁴⁷ The new law was intended to toughen the alien land disability. It was enacted in response to the growing number of Japanese immigrants who could legally enter the country, but were ineligible for naturalization.²⁴⁸ Because the state constitution disabled only those aliens who could not make a good faith declaration of intention to citizenship, the legislature attempted to frustrate the Japanese influx by enacting procedural mechanisms.²⁴⁹ For example, the lawmakers strictly defined certain words in order to narrow the exceptions which had been created by section 33.²⁵⁰ They also established fiduciary restrictions,²⁵¹ as well as time limitations to prevent aliens from holding land indefinitely under the constitution's exceptions.²⁵² If an alien should make a declaration of intention but fail to become a citizen within seven years, the law presumed that the declaration was made in bad faith.²⁵³ In addition, the law provided criminal penalties for its violation.²⁵⁴

The next sixteen years produced several amendments to the Alien Land Bill. Two sections were added in 1923, another in 1933, and three more in 1937. One of the sections enacted in 1923 dealt with the situation presented by a landowner's conveyance of a lesser estate to an alien. That provision gave the state authority to take the money value of the lesser estate out

247. Alien Land Bill of Mar. 8, 1921, ch. 50, 1921 Wash. Laws 156, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987) [hereinafter Alien Land Bill]. An effort was made to amend § 33 of the constitution in 1913. See *infra* note 264.

248. See Huizinga, *Alien Land Laws: Constitutional Limitations on State Power to Regulate*, 32 HASTINGS L.J. 251, 252 (1980); SALE, *supra* note 222, at 174. Japanese immigration was permitted under the Treaty of Commerce & Navigation, Feb. 21, 1911, United States—Japan, art. I, 37 Stat. 1504, T.S. No. 558. Regarding Japanese ineligibility for naturalization, see Act of Jul. 14, 1870, ch. 254, § 7, 16 Stat. 254, 256. Washingtonians also suffered xenophobia with respect to European immigrants; the state legislature asked Congress to "stop the influx of undesirable foreigners" who might immigrate to the area due to the opening of the Panama Canal. See S.J. Res. 6 of Feb. 10, 1913, 1913 Wash. Laws 686.

249. See McGovney, *supra* note 1, at 45.

250. See *generally* Alien Land Bill ch. 50, § 1, WASH. REV. CODE ANN. § 64.16.010 (1966).

251. *Id.* § 3, WASH. REV. CODE ANN. § 64.16.070 (1966).

252. *Id.* §§ 3-5, WASH. REV. CODE ANN. §§ 64.16.070-.090 (1966).

253. *Id.* § 6, WASH. REV. CODE ANN. § 64.16.020 (1966).

254. *Id.* § 7, WASH. REV. CODE ANN. § 64.16.100 (1966).

of the greater estate.²⁵⁵ This was an alternative, at the state's choosing, to an escheat of the lesser estate.²⁵⁶ The other section passed in 1923 addressed the situation in which an alien's child held a title to land. The law created a presumption that the land was held in trust for the alien.²⁵⁷ In 1933, the legislature amended the law to extend to sixteen the number of years that an alien could hold title to land after acquiring it through inheritance, mortgage, or collection of debt; the 1921 law had set a twelve-year limit.²⁵⁸ Of the three amendments in 1937, one expanded the definition of "alien" to include "non-citizens of the United States . . . who are ineligible to citizenship by naturalization."²⁵⁹ A second amendment provided that leaseholds and cropping contracts would escheat to the state on the date of acquisition.²⁶⁰ The final measure enacted in 1937 provided the governor with authority to appoint an investigator to help enforce the alien land law.²⁶¹

Apparently, the Alien Land Bill achieved its proponents' goals. In 1920, there were 17,387 Japanese in Washington, and over the next ten years that number increased by only 450.²⁶² The situation for the Japanese continued to deteriorate until after World War II, when the McCarran Immigration Act permitted them to attain citizenship.²⁶³

255. Act of Mar. 10, 1923, ch. 70, § 1, 1923 Wash. Laws 220, WASH. REV. CODE ANN. § 64.16.040, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987).

256. *Id.*

257. *Id.* § 2, 1923 Wash. Laws 220, WASH. REV. CODE ANN. § 64.16.050, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987).

258. Act of Mar. 15, 1933, ch. 111, § 1, 1933 Wash. Laws 431, WASH. REV. CODE ANN. § 64.16.080, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987). *See supra* note 252 and accompanying text.

259. Act of Mar. 19, 1937, ch. 220, § 1, 1937 Wash. Laws 1092, WASH. REV. CODE ANN. § 64.16.010, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987).

260. *Id.* § 2, 1937 Wash. Laws 1093, WASH. REV. CODE ANN. § 64.16.060, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987).

261. *Id.* § 4, 1937 Wash. Laws 1094, WASH. REV. CODE ANN. § 64.16.110, *repealed by* Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987). One part of the Act of March 19, 1937, was not approved by the governor; it would have added another presumption to the 1923 amendment: "Wherever it shall be proved that an alien works upon, cultivates, manages, controls, supervises or otherwise directs operations, plants, cultivates or harvests crops on any land or handles, sells or disposes of the crops of any land, such alien shall be presumed to own such land." Act of Mar. 19, 1937, ch. 220, § 2, 1937 Wash. Laws 1093.

262. *See* SCHMID, *supra* note 83, at 10 (the Japanese population of the state was 12,929 in 1910, 5,617 in 1900, and 360 in 1890); SALE, *supra* note 222, at 174.

263. Act of Jun. 27, 1952, ch. 2, § 311, 66 Stat. 239. Restrictions on Chinese

2. Constitutional Amendments

Washington changed its constitutional alien land law three times in the years following World War II.²⁶⁴ The first change came in 1950 with the adoption of the twenty-fourth amendment. Under this amendment, the disabilities of section 33 were made inapplicable to citizens of those Canadian provinces that permitted land ownership by Washingtonians.²⁶⁵ In 1954, section 33 was further modified by the twenty-ninth amendment, which removed foreign corporations from within the scope of the section.²⁶⁶ Finally, section 33 was repealed in 1966 by the forty-second amendment.²⁶⁷

3. Judicial Interpretation of Washington's Alien Land Law

No cases were reported regarding the issue of alien land rights under the laws of Washington Territory. However, during the late nineteenth century and through the first four decades of the twentieth century, the Washington Supreme Court had numerous opportunities to add flesh to the bones of section 33 and its related statutes. For example, in 1896, the supreme court held that only the state could determine whether a foreign corporation had violated section 33.²⁶⁸ In its decision, the court stated that the purpose of the prohibition was plainly "to prevent the acquisition of lands in large quanti-

immigration were lifted in 1943 with repeal of the Chinese Exclusion Act. Act of Dec. 17, 1943, ch. 344, 57 Stat. 600.

264. However, in a 1913 effort aimed at relaxing the alien land law, the legislature proposed a constitutional amendment to section 33 which would have permitted resident aliens to acquire and dispose of land located within incorporated municipalities. The provision, which was rejected by the electorate, also would have vested the common school fund with the lands of resident aliens who remained out-of-state for five years. See Proposed Constitutional Amendment Permitting Resident Aliens to Own Real Property in Cities, Act of Feb. 10, 1913, ch. 121, 1913 Wash. Laws 380-82 (rejected by voters).

265. WASH. CONST. amend. 24 (1950, repealed 1966). The 24th amendment was implemented by Act of Feb. 10, 1953, ch. 9, § 1, 1953 Wash. Laws 9, WASH. REV. CODE ANN. § 64.16.150. Besides the Canadian provision, the legislators further amended the alien land law in 1953; the changes were minor and unimportant to this discussion. See Act of Feb. 11, 1953, chs. 10, 11, 1953 Wash. Laws 10, 13.

266. WASH. CONST. amend. 29 (1954, repealed 1966). The 29th amendment was implemented by Act of Mar. 18, 1955, ch. 255, § 1, 1955 Wash. Laws 1042, WASH. REV. CODE ANN. § 64.16.010 (1966).

267. WASH. CONST. amend. 42. This amendment was implemented by Act of Mar. 21, 1967, ch. 163, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987).

268. *Oregon Mtge. Co. v. Carstens*, 16 Wash. 165, 171, 47 P. 421, 423 (1896) (the defendant asserted that the plaintiff corporation, because of its alien status, had no valid title to land acquired on the default of a loan secured by a mortgage).

ties by alien and nonresident owners."²⁶⁹ The next year, the court declared that a land title held by an alien individual, like that of a foreign corporation, was subject to challenge only by the state and not by a complaining mortgagee.²⁷⁰ In February, 1898, it found a ninety-nine year lease void as unreasonably long when it was made to an alien who failed to make a good faith declaration of intention to become a citizen.²⁷¹ Likewise, a forty-nine year lease was held invalid in a case decided in March of the same year.²⁷² No further cases were reported during the nineteenth century.

In 1902, the Washington Supreme Court held that a corporation organized under Washington law would be considered a domestic corporation for all purposes other than land ownership when the majority of its stock was held by nondeclarant aliens.²⁷³ The following year, it decided that a party could defend against land condemnation proceedings on the basis of the plaintiff corporation's alien ownership.²⁷⁴

Four years later, in three separate cases, the issue of alien land rights was once again before the court. The first, decided in January of 1907, established that, because a conveyance to an alien was void against the state only, a citizen who conveyed land to an alien for valuable consideration could not reclaim title to the land upon the alien's death, even though the decedent's heirs were nonresident aliens.²⁷⁵ Also, the court decided that section 33 permitted aliens to inherit land from both alien

269. *Carstens*, 16 Wash. at 167-68, 47 P. at 422 (Hoyt, C.J., concurring). Justice Hoyt had served as president of the constitutional convention. Coincidentally, Justice Dunbar, who had also served as a constitutional delegate, dissented. He saw the object of § 33 to be the prevention of land acquisition by aliens, except when necessary for debt collection. *Id.* at 173, 47 P. at 424. In an earlier federal case, a district court judge saw the plain intention of § 33 to be the prevention of "traffic in real estate by aliens," but did not so plainly see that anything more was intended. *Brigham v. Kenyon*, 76 F. 30, 33 (N.D. Wash. 1896).

270. *Goon Gan v. Richardson*, 16 Wash. 373, 47 P. 762 (1897) (an appeal from a decree foreclosing a mortgage on land).

271. *State ex rel. Atty. Gen. v. Morrison*, 18 Wash. 664, 666, 52 P. 228, 228 (1898) (an escheat action by the state following the lease of land to a co-respondent alien).

272. *State ex rel. Winston v. Hudson Land Co.*, 19 Wash. 85, 88, 52 P. 574, 575 (1898) (an escheat action by the state following the lease of land to the respondent alien-held corporation).

273. *Hastings v. Anacortes Pack'g Co.*, 29 Wash. 224, 230, 69 P. 776, 778 (1902) (in a contest over a fishing site, the respondent foreign corporation's right to temporarily occupy land for fishing purposes was upheld).

274. *State ex rel. Morrill v. Superior Court*, 33 Wash. 542, 550, 74 P. 686, 688-89 (1903) (the case involved the attempted assertion of eminent domain by a foreign-held smelter for the purpose of supplying water to itself and to a nearby municipality).

275. *Abrams v. State*, 45 Wash. 327, 342-43, 88 P. 327, 330-31 (1907) (the plaintiff

and citizen ancestors.²⁷⁶ In the same case, and in a similar one a few months later, the court held that although the state had the right to declare the original conveyance void, it had lost the right by failure to declare escheat before the alien's death.²⁷⁷ The last alien land rights case decided by the supreme court in 1907 expanded the definition of the "valuable minerals" exception to the alien land disability to include lands containing limestone, silica compounds, and clay deposits.²⁷⁸

Seven years elapsed before the court again considered issues related to Washington's alien land law.²⁷⁹ In 1914, it held that a lease between an alien and a landowner was not void when the alien's assignee sued the grantee of the landowner for specific performance on a contract to convey land.²⁸⁰ The following year, the court held that only the state could question ownership when an alien acquired a piece of land under a sheriff's certificate of sale and subsequently transferred it to a citizen.²⁸¹

Two other cases appeared before the supreme court during the years prior to passage of the Alien Land Bill in 1921. Both cases, which grew out of World War I, were decided in 1920; each gave the court an opportunity to address the subject of the good faith declaration of intention to become a citizen. In the first, the court held that "good faith" meant an intention to become a patriotic citizen willing to protect one's adopted country.²⁸² The second case established that an alien's declara-

tried to reclaim valuable urban real estate that the decedent's administrator had leased and to which the decedent's German heirs claimed a right of distribution).

276. *Abrams*, 45 Wash. at 346, 88 P. at 332.

277. *Id.* See also *State ex rel. Atkinson v. World Real Estate Comm'l Co.*, 46 Wash. 104, 89 P. 471 (1907) (the state tried to escheat land which had been conveyed to a domestic corporation by an alien who had purchased the property from a citizen).

278. *State ex rel. Atkinson v. Evans*, 46 Wash. 219, 225, 89 P. 565, 568 (1907) (the court found that the constitution did not intend to limit the word "minerals" to only the specific substances mentioned in § 33).

279. However, in 1909 the court reviewed a case related to § 33, at least by implication. See *Roger v. Whitman*, 56 Wash. 190, 195, 105 P. 628, 630 (1909) (the city attorney for Seattle attempted to acquire the plaintiff's property personally when it was foreclosed to satisfy a tax lien). The case implied that § 33 would not act to disable an expatriate. See *id.* at 195, 105 P. at 630.

280. *Keene v. Zindorf*, 81 Wash. 152, 165, 142 P. 484, 489 (1914) (the court based its decision on the fact that only the state could complain of a violation of § 33).

281. *Prentice v. How*, 84 Wash. 136, 144, 146 P. 388, 391 (1915) (an action to recover possession and quiet title in which the appellant asserted that the respondent-alien could not purchase real estate).

282. *State ex rel. Tanner v. Staeheli*, 112 Wash. 344, 348, 192 P. 991, 993 (1920) (the respondent stood on his alien status when called to military duty by the United States,

tion would not be considered to have been made in good faith when the alien, over a period of years, took no further action to become naturalized.²⁸³

After 1921, the Washington Supreme Court reviewed a number of cases, most of which dealt with the Alien Land Bill. For example, in 1922, the court held that a trust agreement, which named an alien as a beneficiary, violated section 33 and the alien land law of 1921.²⁸⁴ Two years later, the court barred an escheat action that was commenced after an alien conveyed land to a citizen; the state lost its right to escheat by failing to act before the conveyance occurred.²⁸⁵ In another 1924 case and again in 1925, the court found no constitutional infirmities in the state's alien land law.²⁸⁶ The earlier case was an equal protection challenge which held that an alien could not be appointed as a guardian for the estate of his native-born child if the estate included real property.²⁸⁷ The later case, which addressed due process and equal protection concerns, upheld an escheat decree when the evidence sustained a finding that the alien engaged in "mere subterfuge" by purchasing land in the name of a domestic corporation, the capital stock of which was then assigned to his minor daughter.²⁸⁸

but subsequently declared his intention to become a citizen when the state began proceedings to escheat his land).

283. *State ex rel. Tanner v. Rychen*, 113 Wash. 90, 94, 193 P. 220, 221 (1920) (the respondent made his declaration in 1912 and withdrew it in 1918 in order to escape military service by virtue of his alien status).

284. *State v. O'Connell*, 121 Wash. 542, 554, 209 P. 865, 869 (1922) (the court rejected the respondent's argument that the doctrine of equitable conversion was controlling when the trust instrument did not require the trustee to pay rents and income to the alien; the court said that the legislature, in defining rents and profits to be beneficial interests in land, was not bound by the doctrine).

285. *State ex rel. Dunbar v. Shokuta*, 131 Wash. 291, 295, 230 P. 166, 167 (1924) (the land was purchased by the alien under a real estate contract).

286. The constitutionality of § 33 was upheld by the United States Supreme Court in response to an equal protection and due process challenge under the 14th amendment. *Terrace v. Thompson*, 263 U.S. 197, 218 (1923). The Court's opinion, written by Justice Butler, was apparently the subject of much debate due to its lack of objective analysis and sound legal reasoning. See Sullivan, *supra* note 1, at 50-51.

287. *In re Fujimoto's Guardianship*, 130 Wash. 188, 193-95, 226 P. 505, 506-07 (1924) (the court found no denial of equal protection under § 1 of the 14th amendment or article 1, § 12 of the Washington Constitution). The court's decision says something about the attitudes of the period: "[A] very large nullification of the alien land law would occur where the native born progeny of the *fecund* aliens are permitted to have alien parents as guardians of their real estate." *Id.* at 197, 226 P. at 508 (emphasis added).

288. *State v. Hirabayashi*, 133 Wash. 462, 471, 233 P. 948, 951 (1925) (the court found no denial of equal protection or due process under § 1 of the 14th amendment or

The majority of the supreme court's later holdings were more favorable to alien litigants. Consider, for example, the four subsequent alien land law cases reviewed by the court in 1925. The first decision upheld the validity of an alien's gift of land to his native-born child because the gift occurred before the state began its escheat action.²⁸⁹ Using the same rationale in two other cases, the court decided that no intent to evade the law was shown by an alien's conveyance and subsequent leaseback of land to various corporations just before the 1921 law went into effect.²⁹⁰ In the final alien land law case of 1925, the court ruled that the 1921 prohibition against leasing land to aliens was not applicable to valid leases entered into before the prohibition was enacted.²⁹¹

Three more cases were decided by the supreme court before the end of the 1920s.²⁹² In the first of two cases reviewed in 1926, the court sustained a demurrer to an escheat complaint involving a land title held by an American-born Japanese minor because the state failed to allege that the respondents were related to the child; the state also failed to allege that the respondents were not American citizens.²⁹³ That same

article 1, §§ 3, 12 of the Washington Constitution), *aff'd per curiam*, 277 U.S. 1927 (1927) (mem.).

289. *State v. Kosai*, 133 Wash. 442, 453, 234 P. 5, 9 (1925). The state relied upon a 1923 enactment which created a presumption of an arrangement to illegally hold the land in trust for the alien. See Act of Mar. 10, 1923, ch. 70, § 2, 1923 Wash. Laws 220, repealed by Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.050 (Supp. 1987). See *supra* note 257 and accompanying text.

290. *State v. Kurita*, 136 Wash. 426, 431, 240 P. 554, 555 (1924) (escheat denied by the trial court); *State v. Kusumi*, 136 Wash. 432, 436, 240 P. 556, 557 (1925) (trial court judgment in favor of escheat). These two cases, called "twin brothers" by the attorney for the state, were decided by the supreme court on the same day. *Kusumi*, 136 Wash. at 432, 240 P. at 556.

291. *State v. Natsuhara*, 136 Wash. 437, 438, 240 P. 557, 558 (1925) (the alien's ten-year lease was deemed to be of reasonable length). The court said that an escheat of property validly leased under the old (pre-1921) law would raise a "grave [constitutional] question," i.e., it would amount to an unlawful taking without compensation. *Id.* at 442, 240 P. at 559.

292. However, a federal district court rendered a decision in 1929 that denied interlocutory relief to a Canadian-held electrical power transmission company because it failed to allege that its legal remedies were inadequate. *Northport Power & Light Co. v. Hartley*, 35 F.2d 199, 203 (W.D. Wash, S.D. 1929) (Hartley was the state governor). The suit arose because the state attorney general threatened to invoke the alien land laws against the company, which was purchasing electrical power in Canada for transmission to Northport, Washington. *Id.* at 200-201.

293. *State v. Ishikawa*, 139 Wash. 484, 485, 247 P. 730, 730 (1926) (the court also found lack of intent to evade the law because the child held title under a warranty deed which was dated and filed several years before enactment of the 1921 alien land law).

year, the court upheld the validity of an alien's lease acquired after the March 8 passage of the 1921 Alien Land Bill.²⁹⁴ Since the law had no emergency clause, it was held to be ineffective before June 8, 1923—the respondent entered into his lease on June 6.²⁹⁵ In a 1927 decision, the court affirmed the dismissal of a conspiracy prosecution against a citizen landowner who hired Japanese aliens to work and manage his farm lands.²⁹⁶

By the beginning of the thirties, the contours of Washington's alien land law had been well-defined by the supreme court rulings discussed above. Indeed, in the ensuing years, the court reviewed only five more cases with respect to the state's alien land law. All of the cases were decided before the United States entered World War II, and none of them involved Japanese aliens. In one of two cases reviewed in 1931, the court held that when the parties executed a real estate contract in good faith for the illegal sale of land to aliens, relief would be granted through annulment of the contract.²⁹⁷ The second case in 1931 simply held that an alien could not condemn real property.²⁹⁸ In the third case, which was reviewed in 1933, the court held that the question of an heir's alienage was immaterial when land ownership was achieved through inheritance.²⁹⁹ Two years later, the court decided its last alien land law case of the thirties, a case which held that aliens could bring an action

294. *State v. Motomatsu*, 139 Wash. 639, 644, 247 P. 1032, 1034 (1926).

295. *Id.* at 642, 247 P. at 1033. Under Washington's Constitution, as amended in 1911, the people reserve the power to reject by referendum any legislation not immediately needed to protect health, safety, and similar vital interests. WASH. CONST. amend. 7. Furthermore, the constitution provides that no legislation subject to referendum "shall take effect until ninety days after the adjournment of the session at which it was enacted." *Id.*

296. *State v. McGonigle*, 144 Wash. 252, 255-62, 258 P. 16, 18-20 (1927).

297. *Baker v. Knight*, 160 Wash. 500, 503, 295 P. 174, 175 (1931). The vendee, who was the American-born wife of an alien, had lost her citizenship due to circumstances not discussed in the case. The court found that the vendor was unaware of the vendee's alienage. *Id.*

298. *State ex rel. Roberts v. Superior Ct.*, 165 Wash. 648, 650, 5 P.2d 1037, 1038 (1931). The petitioners, a man and wife, attempted to condemn a private way of necessity for property, which they claimed had been sold to them by the wife's parents for \$850; the supreme court agreed with the trial court that the transaction was a sham. The court hinted that the petitioners might try again with a conveyance by gift or, at least, by a credible purchase. *Id.*

299. *Lew You Ying v. Kay*, 174 Wash. 83, 85, 24 P.2d 596, 599 (1933) (a probate dispute between a son [appellant] and the family of a deceased brother-in-law of a Chinese businessman who left a deed of conveyance with no grantee filled in). The case was reversed and sent back for further proceedings on other grounds. *Id.* at 93, 24 P.2d at 600.

for unlawful detainer.³⁰⁰

Finally, the only other reported case on alien land rights went before the Washington Supreme Court in early 1941. The court held that a 1937 amendment to the alien land law was unconstitutional inasmuch as it might disable citizens of the Philippines.³⁰¹ The infirmity was based on the fact that the amendment's title failed to meet a constitutional requirement that a law's title give notice of its content.³⁰²

V. CONCLUSION

Throughout its history, Washington followed alien land ownership policies closely related to its economic realities as a territory and state. Occasionally, the law was tainted with racial discrimination.

When Washington Territory was created, its alien land policies were as free and open as its landscape. The territory needed people to populate and develop a large land area. Thus, immigration was encouraged by the enactment of liberal alien land laws borrowed from similarly situated predecessor-territories. As the years progressed, Washington Territory competed with other sparsely populated territories and states for immigrants and industries. It struggled for decades to be connected by a transcontinental railroad line with the rest of the nation. This railroad would bring more people and opportunities to the territory. At the same time, mining activities held the promise of prosperity through the creation of jobs and the production of minerals. Therefore, with the desire to promote both activi-

300. *Reichlin v. First Nat'l Bank in Montesano*, 184 Wash. 304, 307, 51 P.2d 380, 383 (1935) (the bank foreclosed on the alien-plaintiff's loans, then bought his mortgaged cattle; the action arose because the bank failed to comply with a written notice to remove the cattle from the plaintiff's land). The lower court's judgment for the alien was reversed on other grounds. *Id.* at 316, 51 P.2d at 385.

301. *De Cano v. State*, 7 Wash. 2d 613, 614, 110 P.2d 627, 634 (1941) (affirmed a declaratory judgment which upheld the alien-plaintiff's right to acquire and own land). Following the Spanish-American War, Philippine citizens were not considered aliens under federal law (Act of June 29, 1906, § 30, 34 Stat. 606), but they were not qualified for naturalization except in certain circumstances and were thus held to be within the 1937 amendment to Washington's alien land law which expanded the definition of "alien" to "include all person who are non-citizens [sic] of the United States and who are ineligible to citizenship by naturalization. . . ." *Id.* 7 Wash. 2d at 624-25, 110 P.2d at 630-33. See Act of Mar. 19, 1937, ch. 220, 1937 Wash. Laws 1092, WASH. REV. CODE ANN. § 64.16.010, repealed by Act of Mar. 21, 1967, ch. 163, § 7, WASH. REV. CODE ANN. § 64.16.005 (Supp. 1987).

302. *De Cano*, 7 Wash. at 627, 110 P.2d at 634 (citing WASH. CONST. art. II, § 19). The 1937 law was entitled: "An act relating to the rights and liabilities of aliens with respect to land, and amending chapter 50, Laws of 1921. . . ." *Id.* at 625, 110 P.2d at 633.

ties, the territorial lawmakers modified the alien land law to encourage investment by foreigners in railroads and mineral development. Some foreigners, however, invested labor rather than capital. Their investment was also encouraged because the economy was good and many willing laborers were needed, especially for railroad construction.

Unfortunately, Chinese laborers later experienced a racial backlash from whites who felt their jobs had been threatened. Like its southern neighbors, California and Oregon, Washington Territory reacted to its racial and economic problems with legal restrictions. Just prior to statehood, the territory changed its alien land law to disable those aliens who were incapable of becoming citizens; the Chinese bore the brunt of the change, as they were specifically denied naturalization under federal law. However, it is doubtful that the change in the alien land law had much influence on the Chinese. Their numbers were more likely influenced by racial violence and by federal laws that prohibited immigration of Chinese laborers.

In addition, agrarian interests were especially fearful of the effects of large-scale land purchases by foreign individuals and corporations. The farmers feared both the abuses of absentee-landlordism and the high real estate prices that resulted from speculation by powerful foreign investors. Particularly worrisome were those foreign businesses established solely to trade in land. As a result, the territory's law was rewritten to set rigid limits on land ownership by foreign corporations.

Still, the territorial legislators were aware of the dangers posed to growth in nonagricultural areas, such as railroading and mining, if the alien land disability were made so rigid as to choke off all foreign capital. The earlier law, which extended landholding rights to aliens for railroad and mining purposes, was continued, although it was amended to exclude aliens incapable of becoming citizens. Again, in reality, the Chinese were the only aliens to whom the exclusion really had any significance.

With statehood, Washington entered the Union with a constitution that included a partial prohibition against the acquisition and ownership of nonmineral land by an alien who could not make a good faith declaration of intention to become a United States citizen. The constitutional provision, derived mainly from existing federal legislation that dealt with alien

land rights in the territories, was a strange permutation of the old common law alien land disability. Unlike the common law, the Washington Constitution recognized inheritance as a valid way for aliens to acquire real estate. Also unlike the common law, the constitution denied nondeclarant aliens the right to acquire nonmineral land by act of the parties; they were proscribed from taking by purchase, gift, or devise. Moreover, they were disabled from having nonmineral land held in trust for their benefit. With all its restrictions, though, the constitution permitted even nondeclarant aliens some room to acquire nonmineral land in Washington. In addition to being able to inherit land, they could acquire it under mortgage or in satisfaction of a debt. Such exceptions were probably designed to help people purchase land by allowing foreign-held mortgage companies to continue operations in the state, but also acted to restore some of the land rights lost by the Chinese under territorial law.

Not surprisingly, the constitution met the concerns of two of the state's principal industries, agriculture and mining. Agricultural interests were concerned with absentee-landlordism and land speculation. The constitution responded by disabling individual nondeclarant aliens and foreign corporations controlled, in the majority, by nondeclarant alien stockholders. Also, the constitution accommodated the desires of those who appreciated the importance of alien investment in the development of Washington's mineral resources. The alien disabilities of section 33 were made inapplicable to the acquisition and ownership of lands related to the production of valuable minerals.

Between statehood and the middle of the next century, Washington's alien land law continued to reflect the state's economic realities and racial insecurities. The influx of Japanese immigrants produced an alien land bill in the first quarter of the twentieth century that made the constitution's provisions more strict and that made Washington a less desirable destination for immigrants from the Far East. Despite an equal rights and due process attack, the constitution continued to disable aliens—as effectuated by the toughened alien land statute of the early 1920s—well into the period immediately following World War II.

Finally, after World War II, Washington began to change its constitutional alien land disabilities. Amendments were

adopted which progressively loosened the constitution's restrictions. The first change opened Washington to investment by Canadians. The second change entirely removed the disability with respect to alien-controlled corporations. Washington totally eliminated its constitutional prohibitions against alien land ownership with a third amendment. By the mid-1960s, the state was as free and open to alien land ownership as it was when it began as a territory in the mid-1850s.