Working papers of the EAST-WEST POPULATION INSTITUTE

Peter B. Maggs

LEGAL REGULATION OF POPULATION MOVEMENT TO, FROM, AND WITHIN THE UNITED STATES -- A SURVEY OF CURRENT LAW AND CONSTITUTIONAL LIMITATIONS

Paper No. 25 June, 1972

EAST-WEST CENTER
HONOLULU, HAWAII 96822

An educational institution of the Government of the United States of America in cooperation with the University of Hawaii

THE EAST-WEST CENTER—formally known as "The Center for Cultural and Technical Interchange Between East and West"—was established in Hawaii by the United States Congress in 1960. As a national educational institution in cooperation with the University of Hawaii, the Center's mandated goal is "to promote better relations and understanding between the United States and the nations of Asia and the Pacific through cooperative study, training and research."

Each year about 1,000 degree students, research-minded Senior Specialists and non-degree students, including those in technological development and training programs at the mid-career level, come from more than 35 countries and territories to study and work together at the East-West Center. They are supported by federal scholarships and grants, supplemented in some fields by contributions from Asian/Pacific governments and private foundations. Several hundred more men and women receive training annually at field workshops and refresher courses conducted in the Asian/Pacific area by East-West Center instructional teams co-sponsored by local governments and agencies.

A fundamental aim of all East-West Center programs is to foster understanding and mutual respect among people from differing cultures working together in seeking solutions to common problems. The Center draws on the resources of U.S. mainland universities, and Asian/Pacific educational and governmental institutions as well as organizations in the multi-cultural State of Hawaii.

Center programs are conducted by the East-West Communication Institute, the East-West Culture Learning Institute, the East-West Food Institute, the East-West Population Institute, and the East-West Technology and Development Institute.

* * *

THE EAST-WEST POPULATION INSTITUTE, directed by Dr. Paul Demeny, carries out multidisciplinary research and training as well as related service activities in the field of population, with an emphasis on economic, social, and environmental aspects of population problems in the Asian/Pacific area.

The Institute was established in November 1969. This series of Working Papers, begun in September 1970, is designed to facilitate early circulation and discussion of research materials originating from the Institute.

Peter B. Maggs, Professor of Law at the
University of Illinois at Urbana-Champaign,
was Senior Fellow of the East-West Population
Institute from January to August, 1972.

Peter B. Maggs

LEGAL REGULATION OF POPULATION MOVEMENT TO, FROM, AND WITHIN THE UNITED STATES -- A SURVEY OF CURRENT LAW AND CONSTITUTIONAL LIMITATIONS

Paper No. 25 June, 1972

Author's Acknowledgments:

Written at the East-West Population Institute. In writing this paper I have benefited from comments by Paul Demeny and Welcome Fawcett.

INTRODUCTION

This paper surveys the means now used and the means available to the federal, state and local governments to regulate population movement. The law may affect population movement both directly, as in the case of immigration quotas, and indirectly, as in the case of urban zoning requirements. Indeed in one sense any law which makes a community a more or less attractive place to live may be said to be a law affecting population movement. However, in order to give this paper some focus, its scope is limited to laws which explicitly single out migrants or would-be-migrants for special legal treatment and to laws which directly control factors of particular importance in determining migration such as housing, jobs, welfare benefits and educational opportunity.

The exposition is meant for the non-lawyer. Therefore, it would seem to be appropriate to outline first in general terms some of the basic Constitutional principles involved, so the reader may better follow the argument as to their detailed application.

The Constitution of the United States delimits federal powers from state powers and also places limits upon both federal and state powers. Relevant provisions delimiting federal and state powers are Article I, Section 8, which gives the Congress the power "to regulate commerce with foreign nations, and among the several states...", and "to raise and support armies", and Article I, Section 10, which

limits the power of the states to regulate foreign commerce. These provisions have been interpreted by the courts to give the federal government exclusive power to regulate international immigration, and to invalidate state legislation discriminating against or unduly interfering with interstate transactions including transportation of goods and people.

Federal power is limited by the Fifth Amendment, which provides that, "No person shall be...deprived of life, liberty, or property, without due process of law..." This clause has been interpreted to include a requirement of both procedural and substantive fairness in federal actions. The exact nature of such "due process" limitations has been undergone many changes in Supreme Court interpretation.

The Fourteenth Amendment to the Constitution was adopted to prevent state discrimination against newly-freed slaves. However, it has received much broader interpretation by the courts in limiting state powers. The relevant language of the amendment reads as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of such laws.

Recent Supreme Court cases interpreting the "equal protection" clause of the Fourteenth Amendment have distinguished two types of state action. Economic regulations will be upheld even though different

classes of persons are treated differently, if there is any reasonable basis for such discrimination, and even though the Supreme Court thinks the law in question is highly unwise. Discrimination among citizens in the exercise of their fundamental rights is barred absent "a compelling state interest." Determination of the existence of such "a compelling state interest" is made ultimately by the United States Supreme Court, not by the state legislatures.

Among the "fundamental rights" so protected is the right to travel freely from state to state, which some decisions have based upon the exclusive federal power to regulate interstate commerce, while other decisions have based this right upon the unified nature of the United States implicit in the Constitution.

An Appendix to this paper contains excerpts from some of the leading constitutional decisions relevant to population movement.

I. FEDERAL REGULATION OF POPULATION MOVEMENT

A. International

International population movement is of two types, long-term migration and short-term visits, and in two directions, in and out. Both types and both directions of population movement are regulated by federal law, but the only serious existing or contemplated legal restrictions apply to long-term immigration into the United States. Most of the following discussion will therefore be devoted to this topic.

1. Long-term Population Movement

a. Immigration

Immigration has been regulated directly for many years by a complex system of legal and administrative arrangements for determining who will and who will not be admitted to the United States for permanent residence.[1] Unlike the state governments, the Federal government has generally not attempted to impose restrictions on employment, practice of professions, or landholding by immigrants, restrictions which could make immigration less attractive.[2] In some cases, such as those involving refugees from Hungary and Cuba, the federal government has provided substantial aid to immigrants.[3] Since at present the federal government regulates immigration almost solely by the system of restrictions on admissions, the rest of the discussion of immigration will be devoted to that system, and other approaches will be discussed only in connection with an appraisal of the constitutional limitations on government action.

For many years the immigration law has reflected the facts that more persons have wanted to enter the United States than the United States has wished to admit, and that some persons who have wanted to enter the United States have been regarded as undesirable either because of their individual characteristics (criminals, disease carriers, etc.) or because of prejudices against racial or national origin. Elaborate criteria have been specified in the immigration law for the determination of who will and who will not be admitted. Before 1968, quotas based on national origin were the major method of limiting immigration.[4] This system of discrimination by national origin and hence, though indirectly, by race became increasingly out of harmony with the emphasis on racial equality in the American legal system of the 1950's and 1960's. However the system never was attacked successfully on constitutional grounds. Obstacles to such an attack included the long tradition of arbitrary discrimination against aliens, and procedural difficulties faced by an alien wishing to obtain judicial review of the constitutionality of immigration legislation.

In 1965 major amendments to the immigration law were passed, to take full effect in 1968.[5] This law abandoned the old system of quotas and substituted a system of priorities of three types: relatives of citizens or aliens now living in the United States, persons with outstanding educational or professional qualifications, and persons in occupational categories which were in short supply in the

geographical area to which they wished to immigrate. The whole structure of the law is extremely complex; for the details the reader is referred to the standard treatise on the subject, Immigration Law and Procedure by Charles Gordon and Harry N. Rosenfield.[6]

The effect of the new legislation has been to change greatly the national and social makeup of the group of immigrants coming to the United States and also to change the major destinations of immigration. Since 1968, an increasing majority of immigrants have been close relatives of persons living in the United States, while the number of non-relatives immigrating has declined sharply.[7] Part of this change is explained by the increasing awareness of residents of the United States with relatives abroad of the possibilities under the new law; however, the change is mainly due to certain provisions of the law itself. These provisions provide that immigration by persons other than relatives may be restricted when there is unemployment in their occupational category.[8] Because of the relatively high level of unemployment in the United States since 1968, and particularly in 1970 and 1971, immigration by non-relatives has been curtailed, making their places available for relatives of United States citizens and residents. In determining the degree of unemployment in particular classifications, the federal immigration authorities rely largely on state authorities, who in turn consult with labor unions and other local groups. The role of state and local authorities will be discussed in a later section of this paper.

The shift to immigration of relatives of persons residing in the United States has caused a major shift in the destinations of migration. The law requires that the immigrant who comes as a relative have an "affidavit of support", and the practicalities of the matter require that he have some means of support immediately after his arrival. Typically, this means that the new immigrant comes to the same home, or at least the same community as that occupied by his relatives. While the new immigrant is legally free to move anywhere he wishes in the United States after his arrival, insufficiencies in language and job skills place important practical limitations on his movement. Thus the new law has shifted much of the impact of immigration to areas (such as Hawaii) with large numbers of foreign born and first-generation-American residents, since these are the persons who have relatives eligible to immigrate.

What are the constitutional limitations on federal power to regulate immigration? This question was dealt with in a number of cases which arose during the latter part of the nineteenth century in connection with federal attempts to limit Chinese immigration.[9] The answer given by the Supreme Court at that time was that the federal government was virtually unfettered by constitutional bonds in the choice of who would or would not be allowed to immigrate. Other cases have confirmed equally broad powers to expel.[10] The only major restriction developed by the courts is that aliens who are within the United States are entitled in most cases to a judicial hearing to

assert a claim that the law entitles them to stay in the United States.[11] It would appear that the federal government could constitutionally eliminate immigration altogether, or impose any scheme of selection, except, perhaps, overt racial discrimination.

Could the federal government use indirect incentives or disincentives to control immigration? It is difficult to see why indirect measures would be used to restrict immigration, given the availability of direct measures. Some indirect measure, such as banning aliens residents from non-sensitive federal employment or from social security benefits would probably be subject to constitutional attack as violating substantive due process of the law.

Federal incentives to non-resident aliens to come to the United States would be less subject to attack. Here, assuming that there was a Congressional finding of the need of immigrants in particular categories, there would be a clear basis for giving the incentives to them and not to others, for the due process clause does not bar discrimination on the basis of a reasonable classification for an appropriate public purpose.

b. Emigration

Emigration has never been seriously restricted by United States law, though certain categories of persons have been subject to certain restrictions with regard to leaving the country. These include aliens who have not paid their taxes,[12] fugitives from justice, and formerly included persons subject to Selective Service

registration departing without permission of their draft board.[13] Aliens leaving the country may lose certain tax and social security benefits, and may be unable to fulfill the residence requirements for obtaining citizenship. Any widespread restriction on emigration would face serious constitutional problems in the light of a number of Supreme Court decisions which are considered below in the discussion of the legal regulation of short term visits abroad.

2. Short-term Visits

a. Visits of Foreigners to the United States

For many years the United States had a burdensome tourist visa system that cause foreigners who wished to visit the U.S. considerable inconvenience. More recently, however, Congress and the Executive have realized the contribution that tourism could make to the United States balance of trade and have simplified the requirements for entry by foreign tourists.[14] As in the case of immigration, Congress could constitutionally prohibit entry by foreign tourists or restrict such entry probably even in a highly discriminatory manner. Or, on the other hand, the present practice of expending federal funds for advertisements to encourage foreign tourism and the approval of special cheap excursion rates for foreign tourists by federal transportation regulatory agencies could be continued or greatly expanded without serious constitutional problems.

b. Visits by American Citizens and Residents Abroad

Visits by citizens and residents of the United States to other countries have generally been unregulated except for the case of the categories already mentioned in connection with the discussion of permanent emigration of persons seeking to avoid their legal obligations. The Supreme Court has struck down a number of attempts by federal authorities to refuse passports or limit countries of destination;[15] thus it would appear that any widespread prohibition of visits abroad would face serious legal problems. The imposition of a travel tax on Americans going abroad was seriously discussed during the 1960's, but such tax legislation never passed Congress. If such a tax were passed, its constitutionality might well depend upon its nature. A flat $500 exit fee, which would amount to a prohibition on short-term trips by poor people, might well be found to be an unconstitutional violation of the due process clause of the Fifth Amendment, while a 20% luxury tax on expenditures of over $50 per day while abroad might well meet the test of constitutionality.

One important factor in encouraging short term trips abroad by resident aliens is the provision of the immigration law which allows them to use their immigration card as the equivalent of passport and visa on their return to the United States. This provision has even been stretched to cover the so-called "green card" workers who live in Mexico and Canada and commute to work in the United States each day.[16] It would clearly be constitutional for the

government to abolish these simplified formalities and make aliens who went abroad for short visits go through the whole immigration procedure anew.

B. Interstate

1. Long-term

a. Movement of Government Personnel and Dependents

The federal government frequently reassigns its personnel from work in one state to work in another. For states, such as Hawaii, with large numbers of Federal employees, such assignment may have a major effect on population migration, particularly considering the multiplier effect as other migrants come to fill jobs created by the economic growth caused by the increased federal payroll. In the case of military personnel, such assignments are typically orders which must be obeyed under threat of court-martial. Civilian personnel on the other hand may always resign if they do not like their new assignment. Both civilian and military personnel who are reassigned are offered compensation in the form of travel and relocation allowances.[17] In addition, civilian personnel who move to "hardship" posts (such as Hawaii!) are offered incentives such as annual paid vacation travel.[18]

There would appear to be no constitutional limits upon the power of the government to order military personnel to different places of duty. An attempt to impose military-type discipline on ordinary civil servants would obviously face constitutional as

well as practical problems, since they would indeed be "deprived of... liberty without due process of law." However, neither the practice of giving civil service employees the option of reassignment or dismissal nor the use of relocation allowances or incentives would appear to be open to serious attack.

The federal government undoubtedly affects population movement indirectly by many of its long term spending and purchasing programs. A state which sought to discourage in-migration could undoubtedly decline to accept offered federal funds; however, a state which sought to encourage in-migration by improving living conditions with increased federal funds would have to compete in the political arena with all the other states for a greater share of these funds.

Would a federal program of spending designed to influence migration directly be subject to attack on constitutional grounds? Consider for instance a program of paying moving expenses for families which sought to move from high unemployment areas to low unemployment areas or from areas where housing was scarce to areas where it was plentiful.

In general, the courts have refused to disturb federal economic regulatory legislation provided it bore some reasonable relation to a legitimate sphere of public regulation and provided it did not infringe upon any of the basic rights of citizens or residents (such as the right to vote, the right to move from state to state, the right to freedom of speech, the right to freedom of

religion, etc.). A federal subsidy program to promote and support certain types of population movement would appear to fall within this permissible category. On the other hand a federal program prohibiting or taxing the right to move from state to state would appear to suffer from two serious constitutional infirmities. In the first place, it would probably violate the constitutional right of interstate travel, a right which has gained increasing judicial recognition in recent years.[19] The leading case of Shapiro v. Thompson,[20] which held that long state residence requirements for recipients of welfare benefits were a violation of the right to move freely from state to state as protected under the equal protection clause of the Fourteenth Amendment also held that the similar requirement of Federal law for the District of Columbia violated the due process clause of the Fifth Amendment. In the second place, since the American economy could not function without interstate movement of persons, the law would have to be drafted so as to permit some persons to move while forbidding others to do so. The arbitrary classifications which would have to be made would likewise be subject to attack as violation of the Fifth Amendment due process rights.

II. STATE REGULATION OF POPULATION MOVEMENT

A. International

1. Prospective Immigrants

In the nineteenth century, before there was extensive federal control of foreign immigration, a number of states attempted to regulate immigration on their own. Various laws of this type were declared by the courts to be an unconstitutional attempt by the states to usurp power reserved to the federal government.[21] Undoubtedly the result would be the same today if any state were to enact similar legislation. Since the situation is one of lack of state power rather than of unreasonable exercise of such a power, even a showing of a "compelling state interest" would be of no avail.

The only avenue for states to control international immigration is through the exercise of power delegated by the federal government. Such state exercise of delegated power has become important in the administration of the Immigration Act of 1965, and there would appear to be no constitutional barrier to further delegation of this power.

A prerequisite to immigration by a person not in various special preferred categories and not having close relatives in the United States is a document from the state employment bureau for the area to which he wishes to immigrate to the effect that the would-be immigrant has a bona-fide job offer at the prevailing local wage rate and there are no American workers available to fill the job.

Depending upon its view of local employment conditions, and generally after consultation with local labor union and other interested local governmental and private organizations, the state employment agency may cooperate and supply the necessary documents, or may block the immigration either by demanding a wage rate so high that the prospective employer will not raise his job offer to meet it, or by refusing to certify that there are no American workers available to do the job.[22]

The general principle of delegation of power over immigration to state authorities has not been subjected to serious or successful attack. There would be no constitutional barrier to extending the requirements and delegation further, for instance by requiring state housing authorities to indicate that the immigration would not have an adverse effect on the local housing market and for the immigrant to demonstrate that he had made arrangements for adequate housing. Such changes would require amendment of the immigration laws.

It should be noted however that once an immigrant has entered the United States, he may change his mind about where he wants to live or the job he wants to do, and that as with the case of United States citizens, neither the state nor the federal government has any power to prevent such changes. Of course, if it can be shown that the information as to his intentions in his application for a visa was false and that he had no intention of living or working

where he indicated, there would be no constitutional barrier to expelling him for this fraud.[23] More indirect, but important has been the practice of the United States Immigration and Naturalization Service, of restricting immigration by administrative fiat in those categories where workers were likely to change from the jobs originally taken to jobs in occupations where there is surplus American labor.[24]

2. Alien Residents

Immigration may be discouraged indirectly by the creation of a legal climate of discrimination against aliens. A number of states have barred aliens from state employment and from the practice of certain professions, from land ownership and from various other privileges.[25] Such legislation has long since come under constitutional attack as a denial of equal protection,[26] and little of it could be expected to survive a court test today.

Even if constitutional, such legislation may be superseded by the many treaties the United States has concluded in which citizens of our treaty partners are granted certain privileges in return for reciprocal treatment of American citizens abroad. Such treaties take precedence over state law.[27]

B. Interstate

1. Short-term Visitors

Any state attempt to regulate short-term visits, for instance by taxing or limiting the number of vehicles or airplanes entering or leaving the state faces a number of serious legal obstacles. The early case of Crandall v. Nevada,[28] which struck down a tax on persons leaving a state, is generally interpreted as establishing the right to travel freely from state to state as one of the basic privileges of citizens of the United States. The leading case of Shapiro v. Thompson[29] established the principle that burdens upon this right to travel are constitutional only if shown to be necessary to promote a compelling state interest. In addition to the "right to travel" objection to such regulation, there is also the argument, which has prevailed in many cases, that state regulations on interstate transportation, involve an undue burden upon interstate commerce or infringe upon an area of interstate commerce whose regulation has been preempted by the federal government.

Under what circumstances might state legislation regulating or affecting interstate travel be upheld as constitutional? Here the courts have applied a number of tests. First, the interstate traveler may be taxed or charged the fair costs of the facilities he uses.[30] The state is under no obligation to subsidize airports, seaports, highways or railways for the benefit of interstate travelers. However, the state may not discriminate between interstate and

intrastate travelers. Even a law which appears non-discriminatory on its face may in fact have an improper discriminatory effect, as in the case of a law imposing a tax on airplane tickets graduated by distance, which would unfairly burden interstate travelers who would be buying tickets for longer distances, and would bear no reasonable relation to the cost of providing airport facilities.

The regulation of many areas of interstate travel is already out of the states' hands, having been preempted by Congress. Congress could, at any time, in the exercise of its power to regulate interstate commerce, preempt other areas of interstate travel legislation, supplanting state legislation with federal law.

Denial of certain benefits of state services to short-term visitors has so far withstood attack. Given its limited tax base, the state does have a compelling interest in restricting the use of costly facilities such as state universities to its own residents, or in making non-residents pay a fuller share of the cost of instruction.[31] (Discrimination against true non-residents, should be carefully distinguished from discrimination against new residents, and from discrimination against persons who are in fact residents but have wrongfully been classified as non-residents. Such latter types of discrimination will be discussed below.)

2. Would-be Residents

Attempts by a state to impose direct restrictions upon entrance only upon would-be residents would involve much milder

interference with interstate commerce, since only a small percentage of interstate travelers are changing residence. However, it would involve a much more serious interference with the right to travel, since recent Supreme Court cases have held that the right to change residence is one of the most basic aspects of this right. In the leading case of Edwards v. California,[32] California legislation designed to prevent immigration by indigents from other states was held to be invalid. It would appear from the language of this and other cases that state legislation which was aimed at stopping all, or certain classes of interstate migrants at the border would suffer from a hopeless constitutional infirmity. Cases involving state legislation which permits migration, but discourages it, by placing the new resident in an inferior legal position would appear to be distinguishable. Such cases will be discussed in the next section.

As was mentioned above, the federal government has the power to order military personnel to new duty stations and to transfer federal civil service employees. Most states compete to obtain such assignments because of the economic effects of the inflow of federal payroll money. Thus it would probably be relatively easy politically for states to secure a reduction of the transfer in of federal personnel either informally, or if Congress chose to so provide, through some formal mechanism such as now applies to the immigration laws. Because of competition from other states, it would be difficult for states to secure an increase in the assignment of federal personnel.

Any state attempt to impose legal restriction upon the movement of federal government personnel would clearly be an unconstitutional usurpation of federal power.

3. New Residents

Most states have laws on their books which discriminate against new residents in a variety of areas, including voting, holding public office, state employment, practicing a profession, eligibility for welfare and other benefits, eligibility for admission, low tuition and scholarships at state universities.[33] These laws, taken as a whole probably tend somewhat to discourage long term population movement. Two recent Supreme Court cases, one invalidating residence requirements for welfare[34] and another invalidating residence requirements for voting[35] have thrown grave doubt on the validity of all legislation imposing lengthy residence requirements. (The voting case allowed a maximum of a 30 day requirement for determination of the voter's qualification.) Lower courts have already applied the welfare decision by analogy in a number of areas, such as admission to the practice of a profession,[36] and admission to public housing.[37] Durational residence requirements which had not fallen when this paper was written, such as those for state employment,[38] seem surely doomed to fall as soon as they are attacked in court.

Two grounds have been advanced by the courts as the basis for invalidating short-term residence requirements. The case of Shapiro v. Thompson emphasized the burden created upon the right to

travel (by denial of welfare benefits to new residents) and stated that state legislation discriminating against a certain group of citizens by burdening the exercise of such a basic right would be upheld only if a compelling and legitimate state interest were shown.[39] The language of the Supreme Court in this case and in the more recent case outlawing long residence requirements for voting have made it clear that the showing by the state of an interest so compelling as to allow discrimination between new and old residents is an almost impossible task. If the only compelling interest the state has in passing legislation is that of discouraging or preventing immigration such legislation appears doomed by the holding of the Supreme Court that such an interest "may not constitutionally be promoted" by the state government.[40]

Even if the legislation does promote a compelling state interest other than discouraging in-migration, it still must overcome the general equal protection arguments that there is no reasonable basis for the distinction made between different classes of citizens, or that the basis of discrimination is in fact one prohibited by prior constitutional decisions (e.g., de facto racial basis).

It was mentioned above that a state might make interstate travelers pay a fair share of the cost of the facilities they use. Analogously it has been held that where the state has a contributory insurance type of benefit scheme, higher benefits may properly

be given to older residents who have contributed longer.[41] It may be that extensions upon this holding will form a growing loophole in what now appears to be almost total prohibition of significant state discrimination against new residents.

4. Residents

State laws applicable to all residents alike still may encourage or discourage migration or shape the patterns of migration. Major areas of indirect controls of this nature include taxation, education, welfare, and zoning. State legislation in these areas faces much less in the way of constitutional obstacles. Since there is no special effect upon interstate travelers, arguments based upon the right to travel or interstate commerce regulation have no place. Rather such state controls are judged under traditional equal protection grounds, and will be upheld if they have any reasonable basis, even though different groups of citizens are treated differently, provided again that there is no infringement upon such prohibited areas as racial discrimination.

Thus a state might attract elderly citizens by a program of old age assistance or discourage them by high ungraduated taxes. The recent Supreme Court Case of Dandridge v. Williams[42] upheld legislation providing a maximum welfare benefit no matter how large the family. Similar legislation might discourage some in-migration by large families. A wide variety of other types of legislation

could be conceived which would have major effects upon population movement patterns without overtly discriminating against new entrants.

A major area of indirect control of population movement is zoning. By the zoning system adopted, a state or locality indirectly determines the size and income level of families which can afford to live there and thus controls in-migration. Zoning, which was long held in respect as a progressive means for improving the quality of urban and suburban life has now increasingly come under attack as being an invidious method of racial and economic discrimination in residential opportunity. Only a few points can be touched in this paper; the interested reader is referred to the extensive literature on the subject.[43]

Early court decisions upheld zoning as a legitimate exercise of state regulatory power, provided that the zoning was done as a part of an overall land use plan. Recent decisions however have held that zoning regulations for a substantial area (e.g., a county) will be found unconstitutional even though they form part of a comprehensive land use plan, if their effect is to exclude large groups of the population.[44] The attack on "exclusionary" zoning began with suits against so-called "snob zoning" -- 2 and 4 acre lot size requirements.[45] A more recent Pennsylvania case, which has attracted much attention, invalidated a county zoning ordinance whose effect was to prohibit apartments in the county.[46]

The larger the area from which lower-income groups (or, indirectly, racial minorities) are excluded, the more suspect the zoning legislation.

One careful study, for instance, found that almost all of northeast New Jersey was so zoned as to exclude mobile homes and low cost housing.[47] This had occurred not through legislation at the state level, but through the effort by the various communities to exclude "undesirable" elements. There is no doubt that such major areas of exclusionary zoning will become the subject of increasingly severe constitutional attack, not only as denials of equal protection, since they amount to indirect racial discrimination and affect the basic right of choice of place of residence, but also because they affect the recently reemphasized right to move from state to state.

A few states, for instance Hawaii, have statewide zoning. Such states are both more and less vulnerable to the impact of the recent constitutional decisions on exclusionary zoning. They are less vulnerable, in that their state plan will almost inevitably include provision somewhere for small-lot single-family homes or for high-density apartments. They are more vulnerable in that if some form of inexpensive housing, e.g., mobile homes, is banned completely, the statewide nature of the ban makes the zoning scheme easier to attack as a violation of the right to move from state to state.

The zoning power, while it remains one of the most important of the instruments for regulation of population movement in the hands of the state, must be exercised with extreme caution in the light of these recent decisions.

When state legislation, though non-discriminatory, becomes burdensome on federal government employees in the state, the federal government has the power to exempt federal employees from the effect of such legislation. The most notable federal enactment of this type is the Soldiers and Sailors Civil Relief Act of 1940, which exempts military personnel from a variety of taxes and other legal inconveniences which might otherwise accompany their transfer from state to state.[48]

CONCLUSION

This paper has attempted a survey of the extent of and constitutional limitations upon federal and state regulation of population movement. There are indeed many such limitations. However, there is broad scope for realignment of federal-state power relationships in international immigration by delegation of state power. There is also broad scope for indirect regulation of population movement through federal and state legislation provided discrimination in favor of long-term state-residents is avoided.

FOOTNOTES

1. For a history of immigration legislation, see Charles Gordon and Harry N. Rosenfield, Immigration Law and Procedure (Albany, New York: Banks, 1959-1971), Secs. 1.1-1.4.

2. Gordon and Rosenfield, Secs. 1.24-1.36, 1.4b.

3. Gordon and Rosenfield, Sec. 2.24.

4. Gordon and Rosenfield, Secs. 1.2c-1.3c.

5. Act of October 3, 1965, 79 Stat. 911, now incorporated in Title 8, U.S. Code, (See Appendix). Gordon and Rosenfield, Sec. 1.4c; Thomas J. Scully, "Is the Door Open Again? -- A Survey of Our New Immigration Law," University of California at Los Angeles Law Review 13 (January 1966), 227-249.

6. Gordon and Rosenfield, above, note 1.

7. U.S. Bureau of the Census, Statistical Abstract of the United States, 1971 (Washington, D.C.: GPO, 1971), p. 90.

8. 8 U.S. Code Sec. 1182(a)(14), 79 Stat. 917. Gordon and Rosenfield, Sec. 2.27e.

9. The Chinese Exclusion Case (Chae Chan Ping v. U.S.) 130 U.S. 581 (1889); The Head Money Cases, 112 U.S. 580 (1884) (See Appendix); Gordon and Rosenfield, Sec. 1.5a.

10. Fong Yue Ting v. United States, 149 U.S. 698 (1893). Gordon and Rosenfield, Sec. 1.5c.

11. Knauff v. Shaughnessy, 338 U.S. 537 (1950); Gordon and Rosenfield, Sec. 1.5a.

12. 26 U.S. Code Sec. 6851, 72 Stat. 1665.

13. 32 Code of Federal Regulations, Sec. 1621.16.

14. Gordon and Rosenfield, Sec. 1.82; Act of June 29, 1961, 75 Stat. 129.

15. Zemel v. Rusk, 381 U.S. 1 (1965); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Kent v. Dulles, 357 U.S. 116 (1958).

16. Gordon and Rosenfield, Secs. 2-3e.

17. 5 U.S. Code Secs. 5721-5751.

18. 5 U.S. Code Sec. 5724a.

19. Dunn v. Blumstein, United States Law Week, 40 (March 21, 1972) 4269-4280 (U.S. Supreme Court, March 21, 1972) (See Appendix); Shapiro v. Thompson, 394 U.S. 618 (1969) (See Appendix).

20. 394 U.S. 618 (1969) (See Appendix).

21. Gordon and Rosenfield, Sec. 1.2b; Henderson v. Mayor of New York, 92 U.S. 259 (1875) (See Appendix).

22. Gordon and Rosenfield, Sec. 3.6; Busbee, "Immigration and the Department of Labor," International Relations 43 (1965), 133; "The Labor Certification," in Select Commission on Western Hemisphere Immigration, Report (Washington, D.C.: GPO, 1968), pp. 67-77.

23. Gordon and Rosenfield, Sec. 4.7.

24. Gordon and Rosenfield, Sec. 3.6b.

25. Gordon and Rosenfield, Sec. 7.34b; Konvitz, "The Alien and the Asiatic in American Law," Columbia Law Review, 57 (1956), 1012.

26. Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948) (See Appendix); Truax v. Raich, 239 U.S. 33 (1915); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

27. Constitution of the United States, Article 6, Sec. 2; Kolovrat v. Oregon, 336 U.S. 187 (1960); Gordon and Rosenfield, Secs. 1-122.

28. 73 U.S. (6 Wall.) 35 (1868).

29. 349 U.S. 618 (1969) (See Appendix).

30. Evansville-Vanderburgh Airport Authority District v. Delta Airliner, United States Law Week, 40 (April 18, 1972), 4391-4397 (United States Supreme Court, April 18, 1972) (See Appendix).

31. Charles H. Clarke, "The Validity of Discriminatory Nonresident Tuition Charges in Public Higher Education Under the Interstate Privileges and Immunities Clause," Nebraska Law Review, 50 (Fall 1970), 31-64.

32. Edwards v. California, 314 U.S. 160 (1941) (See Appendix).

33. For a survey of typical discriminatory provisions see: Steven K. Christensen, "The New Resident: Hawaii's Second-Class Citizen," Hawaii Bar Journal, 5 (1969), 77-82.

34. Shapiro v. Thompson, 349 U.S. 618 (1969) (See Appendix).

35. Dunn v. Blumstein, United States Law Week, 40 (March 21, 1972), 4269-4280 (United States Supreme Court, March 21, 1972) (See Appendix).

36. Potts v. The Honorable Justices of the Supreme Court of Hawaii, 332 F. Supp. 1392 (D. Hi., 1971) (See Appendix); Lipman v. Van Zant, 329 F. Supp. 391, (NN.D. Miss., 1971); Keenan v. Board of Law Examiners, 317 F. Supp. 1350 (E.D. N.C., 1970); "Constitutional Law -- One-year Residency Requirement as Prerequisite to Taking Bar Examination Violative of Right to Interstate Travel and Equal Protection," Fordham Law Review 40 (October 1971), 167-174.

37. Cole v. Housing Authority of City of Newport, 435 F.2d 807 (1st Cir. 1970) (See Appendix); Lane v. McGarry, 320 F. Supp. 562 (N.D.N.Y. 1970); one recent case allows such discrimination: King v. New Rochelle Municipal Housing Authority, 314 F. Supp. 427 (S.D. N.Y., 1970). For discussion of the question see R.E. Walsh, "The Constitutionality of a Length-of-Residency Test for Admission to Public Housing," Journal of Urban Law, 49 (August 1971), 121-129.

38. Older cases upholding minimum residence requirements for state employment include Kennedy v. City of Newark, 29 N.J. 178, 148 A.2d 473 (1959); State v. Sargent, 145 Iowa 298, 124 N.W. 339 (1910); People v. McCormick, 261 Ill. 413, 102 N.E. 1053 (1913); Sheehan v. Scott, 145 Cal. 684, 79 p. 350 (1905).

39. 349 U.S. 618 (1969) (See Appendix).

40. Shapiro v. Thompson, 349 U.S. 618 (1969) (See Appendix).

41. Shapiro v. Thompson, 349 U.S. 618 (1969) at p. 631, note 10 (See Appendix).

42. 397 U.S. 471 (1970).

43. Books and articles on this topic are listed in "Bibliography," Syracuse Law Review, 22 (1971), 627-633; particularly useful articles include: P. Davidoff and L. Davidoff, "Opening the Suburbs: Toward Inclusionary Land Use Controls," Syracuse

Law Review, 22 (1971), 509-536; R.H. Freilich and G.A. Bass, "Exclusionary Zoning: Suggested Litigation Approaches," Urban Lawyer 3 (Summer 1971), 344; L.G. Sager, "Tight Little Islands, Exclusionary Zoning, and the Indigent," Stanford Law Review, 21 (April 1969), 767-800; N. Williams, Jr. and T. Norman, "Exclusionary Land Use Controls: The Case of Northeastern New Jersey," Syracuse Law Review, 22 (1971), 475-507. "Exclusionary Zoning and Equal Protection," Harvard Law Review, 84 (May 1971) 1645-1669.

44. "A Survey of Judicial Responses to Exclusionary Zoning," Syracuse Law Review, 22 (1971), 537-582.

45. National Land and Investment Co. v. Easttown Township Board of Adjustment, 419 Pa. 504, 215 A.2d 597 (1965) (4 acre); Board of County Supervisors of Fairfax County v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959) (2 acre).

46. Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970) (See Appendix); R.M. Washburn, "Apartments in the Suburbs: In re Appeal of Joseph Girsh," Dickinson Law Review, 74 (Summer 1970), 634-662; "Appeal of Girsh: a Judicial Requirement for Apartment Zoning," Southwestern Law Journal 24 (December 1970), 838-834.

47. Williams and Norman, above note 43.

48. 50 U.S. Code App. Secs. 501-590.

APPENDIX OF EXCERPTS FROM SELECTED LEGAL SOURCE MATERIALS

CONTENTS

I. IMMIGRATION

A. Federal Power

In 1882 Congress passed "An Act to Regulate Immigration." In The Head Money Cases, 112 U.S. 580 (1884), this law, which imposed a tax on immigration, was attacked as an unconstitutional exercise of Federal power. The Supreme Court rejected arguments that this law was an improper exercise of federal taxing power and upheld it as a legitimate exercise of the power of Congress to regulate foreign commerce, stating:

> The burden imposed on the ship owner by this statute is the mere incident of the regulation of commerce--of that branch of foreign commerce which is involved in immigration. The title of the act, "An Act to regulate immigration," is well chosen. It describes, as well as any short sentence can describe it, the real purpose and effect of the statute. Its provisions, from beginning to end, relate to the subject of immigration, and they are aptly designed to mitigate the evils inherent in the business of bringing foreigners to this country, as those evils affect both the immigrant and the people among whom he is suddenly brought and left to his own resources.
>
> It is true not much is said about protecting the ship owner. But he is the man who reaps the profit from the transaction, who has the means to protect himself and knows well how to do it, and whose obligations in the premises need the aid of the statute for their enforcement. The sum demanded of him is not, therefore, strictly speaking, a tax or duty within the meaning of the Constitution. The money thus raised, though paid into the Treasury, is appropriated in advance to the uses of the statute, and does not go to the general support of the government. It constitutes a fund raised from those who are engaged in the transportation of these passengers, and who make profit

out of it, for the temporary care of the passengers whom they bring among us and for the protection of the citizens among whom they are landed.

If this is an expedient regulation of commerce by Congress; and the end to be attained is one falling within that power, the act is not void, because, within a loose and more extended sense than was used in the Constitution, it is called a tax. In the case of *Veazie Bank v. Fenno*, 8 Wall. 533,549, the enormous tax of eight per cent per annum on the circulation of State banks, which was designed, and did have the effect, to drive all such circulation out of existence, was upheld because it was a means properly adopted by Congress to protect the currency which it had created, namely, the legal-tender notes and the notes of the national banks. It was not subject, therefore, to the rules which would invalidate an ordianry tax pure and simple.

B. Preference Categories

The 1965 amendments to the immigration laws established the following scheme of preferences (8 U.S. Code Sec. 1153):

§ 1153. Allocation of immigrant visas.

(a) Categories of preference priorities; per centum limitations; conditional entries; waiting lists.

Aliens who are subject to the numerical limitations specified in section 1151(a) of this title shall be allotted visas or their conditional entry authorized, as the case may be, as follows:

(1) Visas shall be first made available, in a number not to exceed 20 per centum of the number specified in section 1151(a)(ii) of this title, to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 20 per centum of the number specified in section 1151(a)(ii) of this title, plus any visas not required for the classes specified in paragraph (1) of this subsection, to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

(3) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a)(ii) of this title, to qualified immigrants who are members of the professions, or who because of their exceptional ability in the sciences or the arts will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States.

(4) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a)(ii) of this title, plus any visas not required for the classes specified in paragraphs (1) through (3) of this subsection, to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed 24 per centum of the number specified in section 1151(a)(ii) of this title, plus any visas not required for the classes specified in paragraphs (1) through (4) of this subsection, to qualified immigrants who are the brothers or sisters of citizens of the United States.

(6) Visas shall next be made available, in a number not to exceed 10 per centum of the number specified in section 1151(a)(ii) of this title, to qualified immigrants who are capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States.

C. Lack of State Power

Henderson v. Mayor of New York, 92 U.S. 259 (1875) concerns a New York law which had the purpose and effect of imposing a tax upon the owners of vessels "for the privilege of landing in New York passengers transported from foreign countries." The state statute was held invalid as an invasion of the exclusive federal competence to regulate foreign commerce. The court stated:

> [I]t is clear, from the nature of our complex form of government, that, whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall, or how closely allied to powers conceded to belong to the States.

In denying that the absence at that time of federal immigration legislation gave the states power to enact laws upon the subject, the court stated:

> [U]nder the commerce clause of the Constitution, or within its compass, there are powers, which, from their nature, are exclusive in Congress; and, in the case of *Cooly v. The Board of Wardens*, it was said, that "whatever subjects of this power are in their nature national, or admit of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress." A regulation which imposes onerous, perhaps impossible, conditions on those engaged in active commerce with foreign nations, must of necessity be national in its character. It is more than this; for it may properly be called *international*. It belongs to that class of laws which concern the exterior relation of this whole nation with other nations and governments. If our government should make the restrictions of these burdens on commerce

> the subject of a treaty, there could be no doubt that such a treaty would fall within the power conferred on the President and the Senate by the Constitution. It is in fact, in an eminent degree, a subject which concerns our international relations, in regard to which foreign nations ought to be considered and their rights respected, whether the rule be established by treaty or by legislation.
>
> It is equally clear that the matter of these statutes may be, and ought to be, the subject of a uniform system or plan. The laws which govern the right to land passengers in the United States from other countries ought to be the same in New York, Boston, New Orleans, and San Francisco. A striking evidence of the truth of this proposition is to be found in the similarity, we might almost say in the identity, of the statutes of New York, of Louisiana, and California, now before us for consideration in these three cases.
>
> It is apparent, therefore, that, if there be a class of laws which may be valid when passed by the States until the same ground is occupied by a treaty or an act of Congress, this statute is not of that class.

D. Status of Aliens

A series of cases have imposed severe constitutional restrictions upon state discrimination against aliens. Notable among these was Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948), decided at a time when Japanese were ineligible for citizenship. In this case, the court stated (footnotes omitted):

> The respondent, Torao Takahashi, born in Japan, came to this country and became a resident of California in 1907. Federal laws, based on distinctions of "color and race," *Toyota v. United States*, 268 U.S. 402, 411-412, have permitted Japanese and certain other non-white racial

groups to enter and reside in the country, but have made them ineligible for United States citizenship. The question presented is whether California can, consistently with the Federal Constitution and laws passed pursuant to it, use this federally created racial ineligibility for citizenship as a basis for barring Takahashi from earning his living as a commercial fisherman in the ocean waters off the coast of California.

. . .

It does not follow, as California seems to argue, that because the United States regulates immigration and naturalization in part on the basis of race and color classifications, a state can adopt one or more of the same classifications to prevent lawfully admitted aliens within its borders from earning a living in the same way that other state inhabitants earn their living. The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. See *Hines v. Davidowitz*, 312 U.S. 52, 66. Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states. State laws which impose discriminatory burdens upon the entrance or residence of aliens lawfully within the United States conflict with this constitutionally derived federal power to regulate immigration, and have accordingly been held invalid. Moreover, Congress, in the enactment of a comprehensive legislative plan for the nation-wide control and regulation of immigration and naturalization, has broadly provided:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full

> and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." 16 Stat. 140, 144, 8 U.S.C. § 41.
>
> The protection of this section has been held to extend to aliens as well as to citizens. Consequently the section and the Fourteenth Amendment on which it rests in part protect "all persons" against state legislation bearing unequally upon them either because of alienage or color. See *Hurd v. Hodge*, 334 U.S. 24. The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under nondiscriminatory laws.

II. MOVEMENT WITHIN THE UNITED STATES

A. State Taxation of Interstate Transportation

Guidelines for state taxation of interstate transportation were related by the United States Supreme Court in Evansville-Vandenburgh Airport Authority District v. Delta Airlines, United States Law Week, 40 (1972) 4391. The opinion of the court stated (footnotes omitted):

> The question is whether a charge by a State or municipality of $1 per commercial airline passenger to help defray the costs of airport construction and maintenance violates the Federal Constitution. Our answer is that, as imposed in these two cases, the charge does not violate the Federal Constitution.
>
> . . .

We begin our analysis with consideration of the contention of the commercial airlines in both cases that the charge is constitutionally invalid under the Court's decision in *Crandall v. Nevada*, 73 U.S. 35 (1867). There the Court invalidated a Nevada statute that levied a "tax of one dollar upon every person leaving the state by any railroad, stagecoach, or other vehicle engaged or employed in the business of transporting passengers for hire." The Court approached the problem as one of whether levy of "any tax of that character," whatever its amount, impermissibly burdened the constitutionally protected right of citizens to travel. In holding that it did, the Court reasoned:

> "[I]f the State can tax a railroad passenger one dollar, it can tax him one thousand dollars. If one State can do this, so can every other State. And thus one or more States covering the only practicable routes of travel from the east to the west, or from the north to the south, may totally prevent or seriously burden all transportation of passengers from one part of the country to the other." 73 U.S., at 46.

The Nevada charge, however, was not limited, as are the Indiana and New Hampshire charges before us, to travelers asked to bear a fair share of the costs of providing public facilities that further travel. The Nevada tax applied to passengers traveling interstate by privately owned transportation, such as railroads. Thus the tax was charged without regard to whether Nevada provided any facilities for the passengers required to pay the tax. Cases decided since *Crandall* have distinguished it on that ground and have sustained taxes "designed to make [interstate] commerce bear a fair share of the cost of the local government whose protection it enjoys."

. . .

We therefore regard it as settled that a charge designed only to make the user of state-provided facilities pay a reasonable charge to help defray the costs of their construction and maintenance may constitutionally be imposed on interstate and domestic users alike. The principle that burdens on the right to travel are constitutional only if shown to be necessary to promote a compelling state interest has no application in this context. See *Shapiro v. Thompson*, 394 U.S. 618 (1969). The facility provided at public expense aids rather than hinders the right to travel. A permissible charge to help defray the cost of the facility is therefore not a burden in the constitutional sense.

. . .

Thus, while state or local tolls must reflect a "uniform, fair and practical standard" relating to public expenditures, it is the amount of the tax, not its formula, that is of central concern. At least so long as the toll is based on some fair approximation of use or privilege for use, as was that before us in *Capitol Greyhound*, and is neither discriminatory against interstate commerce nor excessive in comparison with the governmental benefit conferred, it will pass constitutional muster, even though some other formula might reflect more exactly the relative use of the state facilities by individual users.

. . .

We conclude, therefore, that the provisions before us impose valid charges on the use of airport facilities constructed and maintained with public funds. Furthermore, we do not think that they conflict with any federal policies furthering uniform national regulation of air transportation. No federal statute or specific congressional action or declaration evidences a Congressional purpose to deny or pre-empt state and local power to levy charges designed to help defray the costs of airport construction and maintenance.

B. Denial of Entry

The case of Edwards v. California, 314 U.S. 160 (1941), enunciated a doctrine of freedom of travel which has taken on increasing importance. The opinion of the court stated (footnotes omitted):

> The facts of this case are simple and are not disputed. Appellant is a citizen of the United States and a resident of California. In December, 1939, he left his home in Marysville, California, for Spur, Texas, with the intention of bringing back to Marysville his wife's brother, Frank Duncan, a citizen of the United States and a resident of Texas. When he arrived in Texas, appellant learned that Duncan had last been employed by the Works Progress Administration. Appellant thus became aware of the fact that Duncan was an indigent person and he continued to be aware of it throughout the period involved in this case. The two men agreed that appellant should transport Duncan from Texas to Marysville in appellant's automobile. Accordingly, they left Spur on January 1, 1940, entered California by way of Arizona on January 3, and reached Marysville on January 5. When he left Texas, Duncan had about $20. It had all been spent by the time he reached Marysville. He lived with appellant for about ten days until he obtained financial assistance from the Farm Security Administration. During the ten day interval, he had no employment.
>
> In Justice Court a complaint was filed against appellant under § 2615 of the Welfare and Institutions Code of California, which provides: "Every person, firm or corporation or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." On demurrer to the complaint, appellant urged that the Section violated several provisions of the Federal Constitution. The demurrer was

overruled, the cause was tried, appellant was convicted and sentenced to six months imprisonment in the county jail, and sentence was suspended.

Article I, § 8 of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is settled beyond question that the transportation of persons is "commerce," within the meaning of that provision. It is nevertheless true, that the States are not wholly precluded from exercising their police power in matters of local concern even though they may thereby affect interstate commerce. *California v. Thompson*, 313 U.S. 109, 113. The issue presented in this case, therefore, is whether the prohibition embodied in § 2615 against the "bringing" or transportation of indigent persons into California is within the police power of that State. We think that it is not, and hold that it is an unconstitutional barrier to interstate commerce.

The grave and perplexing social and economic dislocation which this statute reflects is a matter of common knowledge and concern. We are not unmindful of it. We appreciate that the spectacle of large segments of our population constantly on the move has given rise to urgent demands upon the ingenuity of government. Both the brief of the Attorney General of California and that of the Chairman of the Select Committee of the House of Representatives of the United States, as *amicus curiae*, have sharpened this appreciation. The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties. See *Olsen v. Nebraska*, 313 U.S. 236, 246.

> But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: "The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin v. Seelig*, 294 U.S. 511, 523.
>
> It is difficult to conceive of a statute more squarely in conflict with this theory than the Section challenged here. Its express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border. The burden upon interstate commerce is intended and immediate; it is the plain and sole function of the statute. Moreover, the indigent non-residents who are the real victims of the statute are deprived of the opportunity to exert political pressure upon the California legislature in order to obtain a change in policy. *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U.S. 177, 185, n. 2. We think this statute must fail under any known test of the validity of State interference with interstate commerce.

C. Durational Residence Requirements

1. Voting

In Dunn v. Blumstein, United States Law Week, 40 (1972), 4269, the United States Supreme Court held that long durational residence requirements for voting were unconstitutional. The case

contains an important exposition of the legal nature of the right to travel. In its opinion, the court stated (footnotes omitted):

> The subject of this lawsuit is the durational residence requirement. Appellee does not challenge Tennessee's power to restrict the vote to bona fide Tennessee residents. Nor has Tennessee ever disputed that appellee was a bona fide resident of the State and county when he attempted to register. But Tennessee insists that, in addition to *being* a resident, a would-be voter must *have been* a resident for a year in the State and three months in the country. It is this additional *durational* residence requirement which appellee challenges.
>
> Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent of totally denying them the opportunity to vote. The constitutional question presented is whether the Equal Protection Clause of the Fourteenth Amendment permits a State to discriminate in this way among its citizens.
>
> To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. Cf. *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). In considering laws challenged under the Equal Protection Clause, this Court has evolved more than one test, depending upon the interests affected and the classification involved. First, then, we must determine what standard of review is appropriate. In the present case, whether we look to the benefit withheld by the classification (the opportunity to vote) or the basis for the classifications (recent interstate travel) we conclude

that the State must show a substantial and compelling reason for imposing durational residence requirements.

. . .

We concluded that if a challenged statute grants the right to vote to some citizens and denies the franchise to others, "the Court must determine whether the exclusions are *necessary* to promote a *compelling* state interest."

. . .

This exacting test is appropriate for another reason, never considered on *Druedling:* Tennessee's durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying period. Thus, the durational residence requirement directly impinges on the exercise of a second fundamental personal right, the right to travel.

. . .

We considered such a durational residence requirement in *Shapiro v. Thompson, supra,* where the pertinent statutes imposed a one-year waiting period for interstate migrants as a condition to receiving welfare benefits.

Tennessee attempts to distinguish *Shapiro* by urging that "the vice of the welfare statute in *Shapiro* ... was its objective to deter interstate travel." Brief, at 13. In Tennessee's view, the compelling state interest test is appropriate only where there is "some evidence to indicate a deterrence of or infringement on the right to travel ...." *Ibid.* Thus, Tenneessee seeks to avoid the clear command of *Shapiro* by arguing that durational residence requirements for voting neither seek to deter travel nor actually do deter such travel. In essence, Tennessee argues that the right to travel is not abridged here in any constitutionally relevant sense.

This view represents a fundamental misunderstanding of the law. It is irrelevant whether disenfranchisement or denial of welfare is the more potent deterrent to travel. *Shapiro* did not rest upon a finding that denial of welfare actually deterred travel. Nor have other "right to travel" cases in this Court always relied on the presence of actual deterrence. In *Shapiro* we explicitly stated that the compelling state interest test would be triggered by "any classification which served to *penalize* the exercise of that right [to travel] ...."

. . .

We turn, then, to the question of whether the State has shown that durational residence requirements are needed to further a sufficiently substantial state interest. We emphasize again the difference between bona fide residence requirements and durational residence requirements. We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision.

. . .

The State's legitimate purpose is to determine whether certain persons in the community are bona fide residents. A durational residence requirement creates a classification which may, in a crude way, exclude nonresidents from that group. But it also excludes many residents. Given the state's legitimate purpose and the individual interests which are affected, the classification is all too imprecise.

. . .

It may well be true that new residents as a group know less about state and local issues than older residents; and it is surely true that durational residence requirements will exclude some people from voting who are totally uninformed about election matters. But as devices to limit the franchise to minimally knowledgeable residents,

> the conclusive presumptions of durational residence requirements are much too crude. They exclude too many people who should not, and need not, be excluded. They represent a requirement of knowledge unfairly imposed on only some citizens. We are aware that classifications are always imprecise. By requiring classifications to be tailored to their purpose, we do not secretly require the impossible. Here, there is simply too attenuated a relationship between the state interest in an informed electorate and the fixed requirement that voters must have been residents in the State for a year and the county for three months. Given the exacting standard of precision we require of statutes affecting constitutional rights, we cannot say that durational residence requirements are necessary to further a compelling state interest.
>
> Concluding that Tennessee has not offered an adequate justification for its durational residence laws, we affirm the judgment of the court below.

2. Welfare

In the case of Shapiro v. Thompson, 394 U.S. 618 (1969), the Supreme Court severely limited the powers of the states to discriminate against new residents. The court stated (most footnotes omitted):

> These three appeals were restored to the calendar for reargument. 392 U.S. 920 (1968). Each is an appeal from a decision of a three-judge District Court holding unconstitutional a State or District of Columbia statutory provision which denies welfare assistance to residents of the State or District who have not resided within their jurisdictions for at least one year immediately preceding their applications for such assistance. We affirm the judgments of the District Courts in the three cases.
>
> . . .

There is no dispute that the effect of the waiting-period requirement in each case is to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist--food, shelter, and other necessities of life. In each case, the District Court found that appellees met the test for residence in their jurisdictions, as well as all other eligibility requirements except the requirement of residence for a full year prior to their applications. On reargument, appellees' central contention is that the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws. We agree. The interests which appellants assert are promoted by the classification either may not constitutionally be promoted by government or are not compelling governmental interests.

. . .

We do not doubt that the one-year waiting-period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibted by

statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the *Passenger Cases*, 7 How. 283, 492 (1849):

> "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."

We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision. It suffices that, as MR. JUSTICE STEWART said for the Court in *United States v. Guest*, 383 U.S. 745, 757-758 (1966):

> "The constitutional right to travel from one State to another ... occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.
>
> "...[T]he right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution."

Thus, the purpose of deterring the inmigration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible. If a

law has "no other purpose ... then to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." *United States v. Jackson*, 390 U.S. 570, 581 (1968).

Alternatively, appellants argue that even if it is impermissible for a State to attempt to deter the entry of all indigents, the challenged classification may be justified as a permissible state attempt to discourage those indigents who would enter the State solely to obtain larger benefits. We observe first that none of the statutes before us is tailored to serve that objective. Rather, the class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purpose with those who come for the sole purpose of collecting higher benefits. In actual operation, therefore, the three statutes enact what in effect are nonrebuttable presumptions that every applicant for assistance in his first year of residence came to the jurisdiction solely to obtain higher benefits. Nothing whatever in any of these records supplies any basis in fact for such a presumption.

More fundamentally, a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. Implicit in any such distinction is the notion that indigents who enter a State with the hope of securing higher welfare benefits are somehow less deserving than indigents who do not take this consideration into account. But we do not perceive why a mother who is seeking to make a new life for herself and her children should be regarded as less deserving because she considers, among others factors, the level of a State's public assistance. Surely such a mother is no less deserving than a mother who moves into a particular State in order to take advantage of its better educational facilities.

Appellants argue further that the challenged classification may be sustained as an attempt to distinguish between new and old residents on the basis of the contribution they have made to the community through the payment of taxes. We have

difficulty seeing how long-term residents who qualify for welfare are making a greater present contribution to the State in taxes than indigent residents who have recently arrived. If the argument is based on contributions made in the past by the long-term residents, there is some question, as a factual matter, whether this argument is applicable in Pennsylvania where the record suggests that some 40% of those denied public assistance because of the waiting period had lengthy prior residence in the State. But we need not rest on the particular facts of these cases. Appellants' reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services.[10]

We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.

In sum, neither deterrence of indigents from migrating to the State nor limitation of welfare benefits to those regarded as contributing to the State is a constitutionally permissible state objective.

---

[10]We are not dealing here with state insurance programs which may legitimately tie the amount of benefits to the individual's contributions.

. . .

> The waiting period requirement in the District of Columbia Code involved in No. 33 is also unconstitutional even though it was adopted by Congress as an exercise of federal power. In terms of federal power, the discrimination created by the one-year requirement violates the Due Process Clause of the Fifth Amendment. "[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'" *Schneider v. Rusk*, 377 U.S. 163, 168 (1964); *Bolling v. Sharpe*, 347 U.S. 497 (1954). For the reasons we have stated in invalidating the Pennsylvania and Connecticut provisions, the District of Columbia provision is also invalid--the Due Process Clause of the Fifth Amendment prohibits Congress from denying public assistance to poor persons otherwise eligible solely on the ground that they have not been residents of the District of Columbia for one year at the time their applications are filed.

3. Practice of a Profession

In Potts v. The Honorable Justices of the Supreme Court of Hawaii, 332 F. Supp. 1392 (D. Hi., 1971), the United States District Court for Hawaii held that a long durational residence requirement for admission to the practice of law violated the equal protection clause of the Fourteenth Amendment. The court stated (footnotes omitted):

> Plaintiff Potts, a citizen of the United States, was neither a qualified and registered voter in the State of Hawaii nor had he "physically resided in Hawaii continuously for a period of six months after attaining the age of 15 years" prior to September 13, 1971, when the Hawaii bar examination was scheduled to be given to those seeking to be licensed to practice law

in the State of Hawaii. Nevertheless, over 60 days before that date he filed application to take the examination. There was no question that he met all prerequisites for eligibility to take the examination, except the residence qualification set forth in 7 H.R.S. § 605-1 or Rule 15(c) of the Rules of the Supreme Court of the State of Hawaii. The Supreme Court of Hawaii refused him permission to take the examination, without stating any reason therefor.

The basic question here is whether the Equal Protection Clause of the Fourteenth Amendment proscribes the application by the Hawaii Supreme Court of the residence qualification of its Rule 15(c) or of H.R.S. § 605-1 to an otherwise qualified applicant desiring to take the Hawaii bar examination.

While neither § 605-1 nor Rule 15(c) discriminates with respect to race, color or nationality, nevertheless both the statute and the rule obviously create two classes of applicants for the Hawaii bar. In one class are those otherwise qualified persons who under § 605-1 are registered voters (with not less than one year's residence) or who under Rule 15(c) have been physically present in Hawaii for a continuous six-month period after reaching age 15. This class is entitled to take the bar examination. In the other class are otherwise equally qualified applicants who, solely because they are not registered voters or have not met the physically present requirement, cannot fit into the procrustean bed of either the law or the rule, and are thereby precluded from taking the bar examination.

[3] Under traditional equal protection principles, a state retains broad discretion in many categories to classify persons. Any such classification, for any purpose, must have a reasonable basis. Thus, if any state of facts reasonably can be conceived that would sustain a challenged classification, even though it were discriminatory, it would not be violative of the Equal Protection Clause of the Fourteenth Amendment.

. . .

This court, of course, recognizes that the State of Hawaii and its Supreme Court "have exclusive jurisdiction over the admission of attorneys, the regulation of the practice of law, and the discipline and disbarment of attorneys * * *." Ginger v. Circuit Court for County of Wayne, 372 F.2d 621, 625 (6th Cir. 1967). This court also is reluctant to interfere in matters so peculiarly state-oriented as are requirements to practice law in the state. Nevertheless, as pointed out by the United States Supreme Court in Schware v. Board of Examiners, 353 U.S. 233, 239, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957), while "a State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, * * * any qualification must have a rational connection with the applicant's fitness or capacity to practice law" to comport with the Fourteenth Amendment. We have the jurisdiction and the obligation to ensure that this constitutional mandate is met.

In attempting to justify its residency qualifications, the defendants maintain, first, that the six months of continued presence "assure[s] that a person with some degree of maturity will be able to absorb, appreciate and understand the unique governmental structure, linguistics, and customs of Hawaii which, in turn, will tend to make him better able to relate to and serve his clients to the end that he may be more fit to practice law in Hawaii."

Whatever else may be "unique" about Hawaii, there is nothing "unique" about its legal system and its laws. Both stem from the Anglo-American common law. Hawaiian terms are today largely limited to an interpretation of the kingdom's land laws and practices. Since there is no law school in Hawaii, all lawyers in Hawaii perforce graduate from mainland law schools. Thus an inference that an "understanding" of Hawaii's "uniqueness" has any valid relevance to an applicant's legal education or ability to be a

sound lawyer here after admission is untenable. The "absorption" argument approaches the ludicrous since Rule 15(c) would permit one who was in Hawaii only between the age of 15 and 15½ to return sixty days before the scheduled examination and thereby be deemed to have qualified as having absorbed, appreciated and understood the "unique governmental structure * * * of Hawaii."

Of equal deficiency is defendants' second argument that at least six months residence at some time is necessary "to provide a minimal acclimatization period * * *." Admittedly, an understanding of the "cultural derivations" of Hawaii's peoples, their "language patterns" and "philosophical outlook on life" would be of value to any lawyer, but such understanding is hardly automatically acquired by any given period of residence here.

The periods of required residency in the statute and the rule here bear no valid relation to the educational and moral qualifications of bar applicants, and are thereby arbitrary and capricious and constitutionally impermissible. Both the act and the rule thus severally invidiously discriminate against an identifiable class, favoring registered voters or six-months residents over otherwise equally qualified applicants who have not the same residential status.

We conclude, therefore, that the preexamination residential requirements imposed by both § 605-1 and Rule 15(c) upon United States citizens applying for leave to take Hawaii's bar examination contravene the Equal Protection Clause of the Fourteenth Amendment, and are thus invalid. By so holding, we need not consider plaintiff's contention that the residency requirements impermissibly penalize his constitutional right to interstate travel or any other constitutional right. Because the law and the rule each denies to Potts and the class he represents the equal protection of the laws, we declare the law as well as the rule to be unconstitutional and therefore void.

D. Exclusionary Zoning

Appeal of Girsh, 437 Pa. 237 (1970) is the most radical of recent cases sustaining attacks upon exclusionary zoning. Appellant Girsh, a builder, challenged the zoning ordinances of Nether Providence Township, which made no provision for apartments in its zoning ordinances. The Pennsylvania Supreme Court stated (footnotes omitted):

> At least for the purposes of this case, the failure to provide for apartments anywhere within the Township must be viewed as the legal equivalent of an explicit total prohibition of apartment houses in the zoning ordinance.
>
> . . .
>
> In refusing to allow apartment development as part of its zoning scheme, appellee has in effect decided to zone *out* the people who would be able to live in the Township if apartments were available. Cf. *National Land and Investment Co. v. Easttown Twp. Board of Adjustment*, 419 Pa. 504, 532, 215 A.2d 597, 612 (1965): "The question posed is whether the township can stand in the way of the natural forces which send our growing population into hitherto undeveloped areas in search of a comfortable place to live. We have concluded not. A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities can not be held valid."
>
> We emphasize that we are not here faced with the question whether we can compel appellee to zone *all* of its land to permit apartment development, since this is a case where *nowhere* in the Township are apartments permitted. Instead, we are guided by the reasoning that controlled in *Exton Quarries*, supra. We there

stated that "The constitutionality of zoning ordinances which totally prohibit legitimate businesses ... from an entire community should be regarded with particular circumspection; for unlike the constitutionality of most restrictions on property rights imposed by other ordinances, the constitutionality of total prohibitions of legitimate businesses cannot be premised on the fundamental reasonableness of allocating to each type of activity a particular location in the community." 425 Pa. at 59, 228 A. 2d at 179. In *Exton Quarries* we struck down an ordinance which did not allow quarrying anywhere in the municipality, just as in *Ammon R. Smith Auto Co. Appeal*, supra, we did not tolerate a total ban on flashing signs and in *Norate Corp.*, supra, we struck down a prohibition on billboards everywhere in the municipality. Here we are faced with a similar case, but its implications are even more critical, for we are here dealing with the crucial problem of population, not with billboards or quarries. Just as we held in *Exton Quarries*, *Ammon R. Smith*, and *Norate* that the governing bodies must make some provision for the use in question, we today follow those cases and hold that appellee cannot have a zoning scheme that makes no reasonable provision for apartment uses.

Appellee argues that apartment uses would cause a significant population increase with a resulting strain on available municipal services and roads, and would clash with the existing residential neighborhood. But we *explicitly* rejected both these claims in *National Land*, supra: "Zoning is a tool in the hands of governmental bodies which enables them to more effectively meet the demands of evolving and growing communities. It must not and can not be used by those officials as an instrument by which they may shirk their responsibilities. Zoning is a means by which a governmental body can plan for the future--it may not be used as a means to deny the future.... Zoning provisions may not be used ... to avoid the increased responsibilities and economic burdens which time and natural growth invariably bring." 419 Pa. at 527-28, 215 A. 2d at 610.

. . .

Nether Providence Township may not permissibly choose to only take as many people as can live in single-family housing, in effect freezing the population at near present levels. Obviously if every municipality took that view, population spread would be completely frustrated. Municipal services must be provided *somewhere*, and if Nether Providence is a logical place for development to take place, it should not be heard to say that it will not bear its rightful part of the burden. Certainly it can protect its attractive character by requiring apartments to be built in accordance with (reasonable) set-back, open space, height, and other light-and-air requirements, but it cannot refuse to make any provision for apartment living. The simple fact that someone is anxious to build apartments is strong indication that the location of this township is such that people are desirous of moving in, and we do not believe Nether Providence can close its doors to those people.

Apartment living is a fact of life that communities like Nether Providence must learn to accept. If Nether Providence is located so that it is a place where apartment living is in demand, it must provide for apartments in its plan for future growth; it cannot be allowed to close its doors to others seeking a "comfortable place to live."

ABSTRACT

A wide variety of federal and state laws affect population movement both directly and indirectly. However the powers of both the federal and state governments to regulate population movement have been severely restricted by a series of Supreme Court decisions interpreting the Constitution.

The federal government has and exercises extensive powers for the regulation of international immigration. State governments, however, may only regulate immigration to the extent powers are delegated by the federal government.

An increasingly strong constitutional doctrine of a right to travel is emerging. This doctrine greatly limits both federal and state power to directly limit population movement. Existing state legislation penalizing population movement by discriminating against new residents cannot stand constitutional scrutiny.

Considerable scope does exist within constitutional limits for both federal and state regulation movement. However such regulation must avoid both direct restriction upon the right to travel and discrimination in favor of long-term state residents.

WORKING PAPERS OF THE EAST-WEST POPULATION INSTITUTE

No.

1 *On the Momentum of Population Growth*, by Nathan Keyfitz; September, 1970, 26 pages. [Now in Reprint form--No. 6]

2 *Reflections on the Family Planning Policy of Korea*, by Hi-Sup Chung; October, 1970, 31 pages.

3 *Husband-Wife Interaction and Family Planning Acceptance: A Survey of the Literature*, by Florangel Z. Rosario; November, 1970, 21 pages.

4 *How Birth Control Affects Births*, by Nathan Keyfitz; November, 1970, 31 pages. [Now in Reprint form--No. 16]

5 *Neoclassical Growth Models and the Optimum Rate of Population Growth (With Applications to Underdeveloped Countries)*, by Robert L. Crouch; November, 1970, 67 pages.

6 *Research in Indonesian Demography: A Bibliographic Essay*, by Geoffrey McNicoll; December, 1970, 51 pages.

7 *Migration as a Means of Population Control*, by Nathan Keyfitz; December, 1970, 25 pages. [Now in Reprint form--No. 8]

8 *Estimating Recent Fertility from Data on Own Children: West Malaysia, 1958-1967*, by Lee-Jay Cho; December, 1970, 31 pages.

9 *Linkages of Intrinsic to Age-Specific Rates*, by Nathan Keyfitz; December, 1970, 33 pages. [Now in Reprint form--No. 14]

10 *Methods of Demographic Estimation for Statistically Underdeveloped Areas*, by Paul Demeny; January, 1971, 149 pages.

11 *A Survey of Social-Psychological Variables Used in Studies of Family Planning*, by Florangel Z. Rosario; February, 1971, 28 pages.

12 *Interpersonal Communication and the Diffusion of Family Planning in West Malaysia*, by James A. Palmore, Paul M. Hirsch and Ariffin bin Marzuki; March, 1971, 33 pages. [Now in Reprint form--No. 13]

Continued

No.

13 *Dual Record Systems for Measurement of Fertility Change*, by H. Bradley Wells; April, 1971, 59 pages.

14 *Fertility Differentials of Japanese Women in Japan, Hawaii and California*, by Y. Scott Matsumoto, Chai Bin Park and Bella Z. Bell; May, 1971, 29 pages.

15 *Measuring Mortality: A Self-Teaching Guide to Elementary Measures*, by James A. Palmore; May, 1971, 71 pages.

16 *Measuring Fertility and Natural Increase: A Self-Teaching Guide to Elementary Measures*, by James A. Palmore; May, 1971, 77 pages.

17 *Population Research in the Pacific Islands: A Case Study and Some Reflections*, by Murray Chapman; September, 1971, 41 pages.

18 *On Aggregative Economic Models and Population Policy*, by Geoffrey McNicoll; October, 1971, 87 pages.

19 *Households, Families and Friends in a Hawaiian-American Community*, by Alan Howard; November, 1971, 117 pages.

20 *What Mathematical Demography Tells That We Would Not Know Without It*, by Nathan Keyfitz; March, 1972, 72 pages.

21 *Multivariate Analysis of Areal Fertility in Honolulu*, by Chai Bin Park; March, 1972, 39 pages.

22 *Population Policy Under an Arbitrary Welfare Criterion: Theory and Issues*, by W. Brian Arthur; March, 1972, 48 pages.

23 *A Model for the Age Distribution of First Marriage*, by Griffith M. Feeney; April, 1972, 31 pages.

24 *Optimal Population Policy*, by W. Brian Arthur and Geoffrey McNicoll; May, 1972, 54 pages.