

May 25, 1974

TALKING POINTS ON LAND ALIENATION

1. Topic of Land Alienation is not limited to the area of real estate. It also involves the issues of the applicability of laws, in particular of the Constitution, to the Northern Marianas, and the economic development of the Commonwealth.
2. Originally this question arose as the result of inquiries as to whether it would be legally and constitutionally possible to limit the alienation of land in the Northern Marianas to persons of Northern Marianas descent. We obtained a memorandum from the Justice Department concluding that such legislation if properly and carefully drafted was likely to be upheld by the courts. That memorandum has been made available to the Commission. We understand that your counsel generally share the conclusions reached therein, but realize that we may be in a troublesome constitutional area.
3. Limitations on the alienability of property are almost intrinsically contrary to the basic constitutional protection of property rights, which includes freedom to acquire land and to alienate it to any willing purchaser. Those constitutional difficulties are multiplied if the limitations on the right to acquire and dispose of property are based on considerations of descent or ancestry. At first glance the proposal therefore seems to conflict with the constitutional prohibitions against invidious racial discrimination and the principles of equal protection and due process.

4. Our conclusion that the proposed legislation nevertheless is more than likely to be upheld by the courts is based on legislative and judicial precedents. Those precedents indicate that there are considerations capable of outweighing even those fundamental constitutional principles. These considerations are the need to protect the original inhabitants of an area acquired by the United States from the selfishness of outsiders and the economic and political pressures of the outside society. In other words, even the normally overriding principles of the Constitution requiring equal protection and due process may not be applied so as to produce mischief and palpable wrongs. As a Supreme Court Justice said the Constitution is not a suicide pact. Such legislation of course has to be drafted carefully so as to provide only for the protection of the landholdings of the original population and make certain that that purpose is not being used as a pretext for other ends of an unfair or discriminatory nature.

5. One precedent is the Hawaiian Home Lands legislation enacted by Congress in 1920 which provided that certain public lands on Hawaii could be leased only to persons of Hawaiian descent and which even limited the amount which could be let to any one person. Those limitations are, with certain exceptions:

Agricultural lands	40 acres
First class pastoral lands	100-500 acres
Second class pastoral lands	250-1,000 acres
Residential lots	1 acre

In this connection it should be mentioned that the Hawaiian Home Lands legislation was originally enacted by Congress. When Hawaii became a State, the Statehood Act contained a provision in the nature of a compact pursuant to which the Home Lands Act became a part of the Constitution of Hawaii, and may be amended only with the consent of the United States.

6. The need to protect the land holdings of the original population of an area thus is sufficiently strong to override the generally applicable constitutional requirements of equal protection and due process. This is indicative of the extraordinary importance of this need. This circumstance also indicates that this is not a matter solely of local interest, the enactment of which is within the discretion of the Northern Marianas. There is also a strong federal interest in legislation which will prevent the same thing that happened in Hawaii from taking place in the Northern Marianas. Our draft covenant therefore provides that the Northern Marianas will - not may - enact legislation to that effect.

7. The basis of this federal interest is the deep involvement of the United States in the economic well being any new area joining it sovereignty, especially if its economic strength is below that of the rest of the country. In those circumstances the original inhabitants are particularly vulnerable to the exploitation by selfish outsiders. The interest of the United States therefore requires that in these circumstances, the original inhabitants retain their land holdings and do not become the landless pawns of outside investors. The Hawaiian Home Lands

legislation was enacted to check the extenction of the Hawaiian or distinct groups by returning Hawaiian families to land. That legislation probably was enacted far too late, however, to do much good.

Samoa presents a situation where the United States went to extraordinary lengths to protect the land holdings of the original inhabitants, because they were the basis of the political, economic and social systems of the Samoan. Congress never passed an Organic Act for these islands because of the--probably exaggerated, fear that the introduction of such legislation might have a disturbing effect on the traditional Samoa land holdings.

It is therefore of critical importance that your new government enact legislation which will insure that the people in the Northern Marianas will retain their land, so that it will not be necessary later to take herculean measures to return them to it. This is nothing but the old principle of locking the barn before the horse has been stolen.

8. It is recognized that outsiders may be reluctant to make investments if they cannot acquire title, or to lend money secured by mortgages, if, in the event of foreclosure, the bidders to the property are limited to persons of Northern Marianas descent. Moreover, the present owners of land probably could get a better price for it if they could sell it to outsiders with greater financial resources. But one of the major purposes in offering you a revolving loan fund not repayable to the federal government is to permit you to establish the sort of development loan fund that

will reduce the need for this type of security on business financing.

Moreover, the economic development of the Northern Marianas will be considered a failure unless most of the real benefits accrue to the population of the Northern Marianas as a whole. We are not interested in seeing a few people here get rich by selling off their birthright and leaving the majority of the population landless and on the federal dole.

9. You are familiar with the conditions of and problems in Guam. Guam provides an example of what happens when land can be transferred freely to outside developers. According to our figures the land holdings in Guam are as follows:

Federal Government	48,400 acres or 34%
Government of Guam	42,000 acres or 30%
Private land holdings	51,600 acres or 36%

It is estimated that something between two-thirds and three-quarters of the private land holdings are now owned by foreigners. We understand that much of the current pressure to turn military lands in Guam over to the territorial government is based on the assumption that somehow those federal lands will get into the

possession of those Guamanians who are now landless because they recently sold their land to outsiders. This is another consideration underlying the interest of the United States in limitations on the transfer to outsiders of lands in the Northern Marianas.

10. You may wish also to give serious consideration to legislation designed to prevent public lands that are made available for private use from becoming concentrated in the hands of a few individuals. The pertinent provisions therefore should limit the amount of public lands which may be transferred or leased to anyone. As mentioned above, the Hawaiian Home Lands legislation contains provisions to that effect.

The laws relating to the disposition of the public lands should also provide that no transfer or leases may be made to persons who hold more than a specified amount of public land.