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Restrictions on Land Alienation: Critique Paper

1. Intrusive Economic Views

Have the alternatives before the Convention been fairly set forth?

My problem with the setting forth of all of the alternatives is the author's elision of some of the crucial precatory language of Section 805 of the Covenant:

It reads, in relevant part:

"....The Government of the Northern Mariana Islands, in view of the importance of the ownership of the land for the culture and traditions of the people of Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency:

"(a) will"

(emphasis added)

The problematical reading occurs at key points in the paper, and consistently represents the precatory or intent language in Section 805 as a matter "negative" and "positive" goals without giving any weight to the "self-sufficiency" language. For example, at pp. 304:

"The writings mentioned above, particularly the introductory portion of Section 805, make clear that the drafters had both negative and positive goals in mind. Negatively, they wished to block the threat to the culture of the Marianas posed by foreign ownership of land. In the same vein, they wished to prevent any exploitation of the people of the Commonwealth by alien interests. Positively, they wished to ensure that the Marianan people would reap the benefits of economic development. There was no desire to freeze the economy, as it relates to land, in its current condition. Rather, the goal was to channel economic advance in a direction that would not damage the Marianan tradition, or deprive the Marianans themselves of the material improvements associated with an advance."

(emphasis added)

Apart from the pejorative connotation -- perhaps unintentional -- of "negative" and "positive" goals, the author's conception of a preamble at virtual cross-purposes with itself seems gratuitous, in view of the language of Section 805. The author omits discussion of the goal as worded, i.e. "economic advancement and self-sufficiency". Instead, only "the benefits of economic development" are discussed, and a desire not to "deprive the Marianans themselves of the material improvements associated with such an advance."

The notion that "economic advancement" coupled with "self-sufficiency" might mean an end-state having a lesser level of "material improvements" or a slower rate of material improvement is nowhere suggested. The limiting Hobson's Choice posed by the author is apparently between galloping U. S. materialism and moribund Burmese primitivism. Doesn't economic self-sufficiency as a goal suggest a more modest horizon with less dependence on foreign investment and "exploitation" and fewer threats to "culture and traditions" of the Marianas? Doesn't a goal of economic self-sufficiency harmonize the values of cultural tradition and economic development? Why given the actual words of the covenant, isn't this alternative thrown in the pot with the others?

The author's prejudices are again displayed in the paper's "Policy Considerations" section at pp. 16-17. Economic self-sufficiency is never mentioned in a major passage which relates the rather different goal of "economic development" to the need to persuade foreign investors to provide resources for growth. The author concludes this section with the following statement:

"There are approaches to the question of land alienation which can needlessly impede the flow of money from abroad, and thus slow the improvement of the people's condition. The Convention therefore must be alert to the indirect consequences of the restrictions they impose."

The author's implication is clear: more restrictions on land alienation mean a slower rate of economic development. But the Covenant expressly seeks "economic development and self-sufficiency", not rapid economic development, or rapid improvement of the people's condition (whatever that may mean).

The author's economic views again intrude on page 41. It would be better if the Covenant's words in Section 805 were repeated at these points in the paper. Distortion would be minimized, and a fuller and freer choice afforded the delegates among the land alienation restriction alternatives.

2. Additional Constitutional Questions

Equal protection in racial situations and "taking" are discussed as potential constitutional challenge arguments which might be anticipated. I would add two other arguments which might be anticipated in a constitutional challenge to land alienation restrictions.

Shapiro v. Thompson 394 U.S.618(1969) held a residence requirement for welfare eligibility to be an infringement of the constitutional right to travel. The right to travel was a right to move about among the states comprising the entire country. Conditioning the right to acquire land in the Northern Marianas on residence in the Northern Marianas, could under the reasoning of Shapiro and its progeny be seen as a violation of the right to travel to the Northern Marianas, certainly as affecting Micronesians who now are fellow travellers of the Marianans within the Trust Territory.

Sugarman v. Dougall 413 U.S.634(1973) held that aliens were entitled to equivalent status to citizens in pursuit of civil service positions. The Supreme Court appears to be increasingly receptive to alien petitions alleging discrimination. The proposed land alienation restrictions would produce disfavored alien status within as well as without the Trust Territory, -- a status different from would-be-civil servants, but no less disfavored. Alienage classifications for land holding were found suspect classifications in Graham v. Richardson 403 U.S.956(1971) and Oyama v. California 332 U.S.633(1948) and required satisfaction of a heightened and compelling state interest standard before being sustained. It is important to note that alienage as well as racial classifications are suspect for equal protection purposes.

These arguments are perhaps no weightier than those discussed in the paper, although they are au courant and perhaps therefore worth mentioning. The defenses discussed at pp. 9-13 are as appropriate to these theories of action as they are to racial equal protection and taking theories.

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In other respects I found the author's discussion of the land alienation restrictions issues and considerations to be well summarized and useful for the Convention.