

## The Natural Right of Disposition by Will; International Travel as a Natural Right

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## RECENT DECISIONS

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### The Natural Right of Disposition by Will

In *Campbell v. Musart Society of the Cleveland Museum of Art*<sup>1</sup> the Probate Court of Cuyahoga County, Ohio, said in its dicta, that the right to make a disposition of property by will is neither a natural, nor in the United States, a constitutional right.

In general, the overwhelming authority in the United States is that the right to dispose of property by will is purely statutory, subject to the complete control of the legislature.<sup>2</sup>

In the days of undeveloped society, family ownership preceded individual ownership and although the father was lord of the family, he held all possessions as trustee for his children. Upon his death all possessions would be the family's by universal succession.<sup>3</sup> Until the time of the Romans, there is very little mention of wills in history although there are some traces in older civilizations. For example, in 2548 B.C. an Egyptian executed an instrument, on papyrus, witnessed by two scribes, giving certain property to his wife and appointing a guardian for his infant children.<sup>4</sup> The Assyrian monarch, Sennacherib, who died in 681 B.C., left an instrument bequeathing to his son a vast treasure.<sup>5</sup> However, the ancient code of Hammurabi made no mention of wills and although a son might be disinherited for good cause, this had to be done

in a proceeding before a judge, which was apparently held in the lifetime of the father.<sup>6</sup> According to Tacitus the will was unknown to the Germans in the second century A.D.,<sup>7</sup> and it was also unknown among the Greeks until the time of Solon.<sup>8</sup>

Even in Rome, which is usually credited with the true power of testation, we find no express recognition of testamentary power until the time of the Twelve Tables.<sup>9</sup> These ancient testaments or wills of Rome were actually the mode of declaring who was to succeed to the chieftainship of the family held by the testator and the material property was not mentioned at all or only as an adjunct or appendage of the family.<sup>10</sup>

While the right to transfer property to descendants by inheritance was recognized in early times, the idea of disposing of one's property by will as we know it today did not exist.

The first Roman testaments were executed in the parliament of the patricians of Rome. Under the caste organization of Rome, members of the same *gens* had certain rights in the estates of families belonging to it. The *gens* was composed of two classes of families: the *agnati* who descended from a common ancestor in the male line; and the *gentiles* which were members bearing the same name. Members of the two classes of families that composed the *gens* assembled in the parliament to which the testaments were submitted. Here it was de-

<sup>1</sup> 131 N.E. 2d 279 (Ohio Prob. Ct. 1956).

<sup>2</sup> 1 PAGE, WILLS §25 (3d ed. 1941).

<sup>3</sup> MAINE, ANCIENT LAW 183, 184 (7th ed. 1878).

<sup>4</sup> ATKINSON, WILLS §2 (2d ed. 1953).

<sup>5</sup> *Ibid.*

<sup>6</sup> 1 PAGE, WILLS §10 (3d ed. 1941).

<sup>7</sup> 1 *id.* § 12.

<sup>8</sup> 4 KENT, COMMENTARIES \*502.

<sup>9</sup> MAINE, ANCIENT LAW 190 (7th ed. 1878).

<sup>10</sup> *Id.* at 191.

cided who was to succeed to the estates of the families, for on default of the *agnati*, the *gentiles* would succeed.

However, the Roman will that has had such a wide influence on other nations was not the one executed in the parliament, but rather an inter vivos conveyance known as the Plebeian Will.

The Plebeian Will was derived from a procedure used in Roman conveyance, called the *mancipatio*, a sale between the vendor and vendee. For this transaction there were required five witnesses and the *libripens* who held the scales upon which the uncoined copper of ancient Rome was weighed.<sup>11</sup>

The Plebeian Will or testament *per aes et libram* (with the copper and scales) was a *mancipatio* in which the testator was the vendor, and the appointed heir or purchaser of the family (*emptor familiae*) was the vendee, the family being the object of the sale.<sup>12</sup> However, it was a fictitious sale, for the vendee only pretended to pay a price by striking the scales with a piece of money.<sup>13</sup> Among the characteristics of the Plebeian Will were: (1) a publication of the sale;<sup>14</sup> (2) irrevocability;<sup>15</sup> and (3) suspension of effectiveness until the testator's death.<sup>16</sup>

The Pretorian Will, later used contemporaneously with the Plebeian Will, was a form of the Plebeian Will which although requiring witnesses, seals and a written document lacked some of the formalities of the Plebeian Will.<sup>17</sup> It contained only those elements that were necessary to guarantee against fraud.

However, in the days of Gaius, the *emptor*

*familiae* did not have to be the beneficiary of the will, and the heir could be someone who had to surrender the *familia* to someone else after the testator's death.<sup>18</sup> It was at this time that the will became secret and revocable.<sup>19</sup>

The will as we know it today, though it was derived from the old Roman will, is far from being what it stood for in ancient times. The early Roman wills which were inter vivos conveyances did not represent the means of arranging for the transfer of one's property after death.

The only jurisdiction in the United States maintaining that the right to dispose of property by will is an inherent one is Wisconsin.<sup>20</sup> The basis for this contention is found in the case of *Nunnemacher v. State*.<sup>21</sup> Actually, the question before the court was the right to take by inheritance but the court also expounded the idea of the right of an individual to dispose of property by will.

In the *Nunnemacher* case, the court reasoned that the government is the creature of the people, who in full possession of liberty and property came together and united to protect themselves, their liberty, and their property. How then, it argued, could the government, which is the agency of the people, create property rights and confer them upon its creators, who had them before it existed? Yet, the court did not deny that governments, from earliest times, regulated the exercise of these rights by positive law. The court also claimed that the idea, that the government has the right to create and destroy property rights, has probably de-

<sup>11</sup> HANNAN, CANON LAW OF WILLS 21 (1935).

<sup>12</sup> *Id.* at 22.

<sup>13</sup> *Id.* at 21, 22.

<sup>14</sup> *Id.* at 22.

<sup>15</sup> *Id.* at 21.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Id.* at 22, 23.

<sup>18</sup> *Id.* at 24.

<sup>19</sup> *Ibid.*

<sup>20</sup> *In re Rice's Will*, 150 Wis. 401, 136 N.W. 956 (1912); *Nunnemacher v. State*, 129 Wis. 190, 108 N.W. 627 (1906) (dictum).

<sup>21</sup> *Nunnemacher v. State*, 129 Wis. 190, 108 N.W. 627, 629, 630 (1906) (dictum).

veloped from failure to keep in mind the radical difference between our republican theory of the origin of government (*i.e.*, man is the source of all rights, and united and formed governments to protect them) and the medieval idea that government was sent down from above, with consequent rights and privileges flowing in gracious streams to the people, who otherwise would not possess them.

The court admitted that the existence of the right to dispose of property by will in the earliest times is not easy of proof but stated that nevertheless it seemed there could be no doubt of the fact. To uphold this statement it quotes *Schouler on Wills* to the effect that history:

. . . confirms the opinion that the practice of allowing the owner of property to direct its destination after his death, or at least of imposing general rules of inheritance, is coeval with civilization itself, and so close, in fact, upon the origin of property and property rights as not to be essentially separated in point of antiquity.<sup>22</sup>

However, the right to transmit property by inheritance is to be distinguished from the right to dispose by will, for while proof is lacking in regard to the natural right to transmit property by will, there seems to be a natural right to transmit property by inheritance.

The right to transmit property by descent, to one's own offspring, is dictated by the voice of nature. The universality of the sense of a rule of obligation, is pretty good evidence that it has its foundation in natural law. It is in accordance with the sympathies and reason of all mankind, that the children of the owner of property which he acquired and improved by his skill and industry, and by their association and labor, should have a

better title to it at his death than the passing stranger. It is a continuation of the former occupancy in the members of the same family. This better title of the children has been recognized in every age and nation, and it is founded in the natural affections, which are the growth of the domestic ties, and the order of Providence.<sup>23</sup>

It should also be noted, that the Athenian Commonwealth was introduced to the testament by Solon only in the case in which the testator had no issue,<sup>24</sup> and in Roman law a man was not allowed to disinherit his own issue without assigning a just cause in his will.<sup>25</sup>

Considering the problem, Pope Leo XIII in *Rerum Novarum* says:

For it is a most sacred law of nature that a father must provide food and all necessities for those whom he has begotten; and, similarly, nature dictates that a man's children, who carry on, as it were, and continue his own personality, should be provided by him with all that is needful to enable them honorably to keep themselves from want and misery in the uncertainties of this mortal life. Now, in no other way can a father effect this except by the ownership of profitable property, which he can transmit to his children by inheritance.<sup>26</sup>

The encyclical speaks only of the right to transmit by inheritance, not of the right to have a will enforced. This right to transmit by inheritance is based upon the right of beneficiaries (that is, the widow and children of the deceased) to be provided for after the death of the head of the household. In other words, this right of the decedent to dispose of his property does not arise of itself but is contingent upon the natural right of the heirs to inherit.<sup>27</sup>

<sup>22</sup> 2 KENT, COMMENTARIES \*326.

<sup>24</sup> *Id.* at \*327.

<sup>25</sup> *Ibid.*

<sup>26</sup> TREACY, FIVE GREAT ENCYCLICALS 6 (1939).

<sup>27</sup> HANNAN, CANON LAW OF WILLS 5 (1935).

<sup>22</sup> SCHOULER, WILLS 13 (2d ed.), as quoted in *Nunnemacher v. State*, 129 Wis. 190, 108 N.W. 627, 629 (1906).

The constitutionality of statutes imposing a tax on successions to estates is usually the question directly involved in the decisions which have declared that the right to take property by inheritance or devise is not a natural right. Probably the earliest case dealing with the problem was *Mager v. Grima* in which the United States Supreme Court remarked:

Now the law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and term within which property real and personal within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it.<sup>28</sup>

In *United States v. Fox*, it was stated that the power of the state to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted.<sup>29</sup>

Again, in *United States v. Perkins*, a case discussing whether personal property bequeathed to the United States was subject to an inheritance tax of New York State, the Court stated:

Though the general consent of the most enlightened nations has, from the earliest historical period, recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good.<sup>30</sup>

Although these opinions have been cited as authority for the proposition that there is no natural right to inherit property and are the basis of other like decisions, a close analysis of the language in these cases would seem to indicate that the Court was not denying the natural right to inherit but rather was talking about the power of the legislature to regulate it.

A recent New York case, *Estate of Augustus Van Horne Stuyvesant, Jr.*,<sup>31</sup> considered the question of the natural right to have a will enforced. In that case, the testator left the bulk of his fortune to St. Luke's Hospital with the direction that the hospital use the money to erect a memorial pavilion in memory of his parents. In the same will there was also a clause directing that certain family portraits and other miniatures be destroyed upon the testator's death. However, St. Luke's Hospital wanted one of the portraits for its Memorial Pavilion and the New York Historical Society wanted the other portraits and miniatures preserved since they are associated with New York's early annals.

When the Surrogate's Court was originally petitioned to prevent the destruction of these items the court ruled that the mandate of the will must be obeyed.<sup>32</sup> However, upon reargument, counsel for the executor of the estate petitioned that the portraits and miniatures be turned over to St. Luke's Hospital as part of the residuary estate, stating that, since the decedent did not have the right or the power to direct the wanton destruction of any of the assets of his estate, the direction in the will to destroy the family portraits and miniatures was invalid and should be disregarded. In support of his position he cited

<sup>28</sup> *Mager v. Grima*, 49 U.S. (8 How.) 667, 668 (1849).

<sup>29</sup> *United States v. Fox*, 94 U.S. 315, 320 (1876).

<sup>30</sup> *United States v. Perkins*, 163 U.S. 625, 628 (1896).

<sup>31</sup> 136 N.Y.L.J. No. 123, p. 6, col. 7 (Surr. Ct. Dec. 28, 1956).

<sup>32</sup> *Id.* at No. 112, p. 8, col. 6 (Surr. Ct. Dec. 12, 1956).

the New York Court of Appeals as follows:

The right to make a testamentary disposition of property is not an inherent right; nor is it a right guaranteed by the fundamental law. Its exercise to any extent depends entirely upon the consent of the legislature as expressed in their enactments.<sup>33</sup>

The petitioner noted that the legislature has expressed its consent to the testamentary disposition of personal property in Section 15 of the New York Decedent Estate Law which reads as follows:

§ 15. *Who may make wills of personal estate.* Every person of the age of eighteen years or upwards, of sound mind and memory, and no others, may give and bequeath his or her personal estate, by will in writing.

It was argued that the right to make a testamentary disposition in New York is therefore limited to a gift or a bequest. Since the provision in the decedent's will directing the destruction of the family portraits and miniatures is neither a gift nor a bequest, counsel requested that this clause be declared invalid.

The court did not specifically declare invalid the provision in the will directing the portraits to be destroyed. It did, however, direct the portrait of the decedent's father to be delivered to St. Luke's Hospital and ordered the remainder of the items to be given to the New York Historical Society. By not enforcing the provision in the will the court in effect held it to be invalid and, it would seem, reaffirmed the rule that there is no natural right to have a will enforced but rather that the right of enforcement lies solely within the regulation of the state.

<sup>33</sup> Matter of Bergdorf, 206 N.Y. 309, 316, 99 N.E. 714, 717 (1912); see also Rubin v. Irving Trust Co., 305 N.Y. 288, 113 N.E. 2d 424 (1953).

## International Travel as a Natural Right

In *Shachtman v. Dulles*<sup>1</sup> the United States District Court, on reviewing the denial of a passport by the Secretary of State for the sole reason that the name of an organization of which the applicant was chairman appeared on the Attorney General's subversive list, held that since the right to travel is a natural right and as such comes under the right to "liberty" protected by the Fifth Amendment of the Constitution, it is subject only to the rights of others and reasonable regulation under law. The reason for denial given by the Secretary, being arbitrary, did not constitute reasonable regulation and due process.

The importance of the question of whether international travel is a right or a privilege is of recent origin.<sup>2</sup> There was little discussion of the subject in the law of the early years of the United States because there were no restrictions on the freedom to enter and leave the country, and a passport was a document "purporting only to be a request that the bearer of it may pass safely and freely . . . by which the bearer is recognized in foreign countries, as an American Citizen."<sup>3</sup>

The fact now is that it is impossible to leave this country without a passport<sup>4</sup> and that even if a person were able to leave the country without that document, it would be impossible for him to enter a great many foreign countries without it.<sup>5</sup>

<sup>1</sup> 225 F. 2d 938 (D.C. Cir. 1955).

<sup>2</sup> "Passport Denied," *State Department Practice and Due Process*, 3 STAN. L. REV. 314 (1950-51).

<sup>3</sup> *Urtetiqui v. Darcy*, 34 U.S. (9 Pet.) 692, 699 (1835).

<sup>4</sup> Presidential Proclamation No. 2523, 6 FED. REG. 5821 (1941).

<sup>5</sup> Comment, 61 YALE L. J. 171 (1952).

Thus, the question of the right to travel is today inter-related with the right to be granted a passport, and the "discretion" allowed by Executive Order to the Secretary of State in granting or denying passport applications<sup>6</sup> is subject to the limitations of the Constitution so that a person may not be denied a passport without sufficient reason and due process of the law.<sup>7</sup>

Traditionally, the freedom to travel abroad seems to have been considered a right, and was clearly recognized by the early common law of England. As early as 1215, the *Magna Carta* made it lawful "for anyone . . . to leave our kingdom and to return safe and secure by land and water. . . ."<sup>8</sup> Blackstone later said that the common law allowed men to go abroad for whatever reason they wished.<sup>9</sup>

In the United States, the right to travel between the states was recognized in 1867 in *Crandall v. Nevada* where the Court said that this right is in its nature independent of the will of any state over whose soil a man must pass in the exercise of it.<sup>10</sup> In *Allgeyer v. Louisiana* the Court, in construing the word "liberty" in the due process clause of the Fourteenth Amendment, said:

The Liberty mentioned in that amendment means not only the right of the citizen to be free from mere physical restraint of his person . . . but . . . the right of the citizen to be free in the enjoyment of all his faculties . . . to live and work where he will. . . .<sup>11</sup>

In the next century the Supreme Court, in considering the constitutionality of a state tax on occupations, including persons en-

gaged in hiring laborers to be employed beyond the state limits, was most emphatic in its affirmation that the right of locomotion is an attribute of personal liberty and a right secured by the Constitution under the word "liberty" in the Fourteenth Amendment.<sup>12</sup>

More recently, the United Nations in its *Universal Declaration of Human Rights*<sup>13</sup> has recognized the right of international travel.

*Shachtman v. Dulles, supra*, is one of a series of recent cases which have raised the question whether the right to travel is protected by the due process clause of the Fifth Amendment. The first case was *Robeson v. Acheson*.<sup>14</sup> In that case, appellant's passport had been invalidated by the State Department on the somewhat vague grounds that his travel abroad would be "contrary to the best interests of the United States."<sup>15</sup> In appealing from a District Court dismissal of the complaint, Robeson charged that the action of the State Department was violative of due process. The appeal was dismissed as moot since the appellant's passport had previously expired. In *Bauer v. Acheson*<sup>16</sup> the court held that where the applicant was denied a passport he was entitled to a hearing by the State Department wherein his passport rights might be determined. The court said that the right to travel came under the right to liberty in the Fifth Amendment but failed to give any reason for the holding, other than that the right was an "attribute of personal liberty."<sup>17</sup>

The instant case is the third in this series

<sup>12</sup> *Williams v. Fears*, 179 U.S. 270 (1900).

<sup>13</sup> 1948-49 YEARBOOK OF THE UNITED NATIONS 536, art. 13 (1950).

<sup>14</sup> 198 F. 2d 985 (D.C. Cir. 1952).

<sup>15</sup> Boudin, *The Constitutional Right to Travel*, 56 COLUM. L. REV. 47, 61 (1956).

<sup>16</sup> 106 F. Supp. 445 (D.D.C. 1952).

<sup>17</sup> *Id.* at 451.

<sup>6</sup> Exec. Order No. 7856, 22 C.F.R. §51.75 (1949).

<sup>7</sup> See *Bauer v. Acheson*, 106 F. Supp. 445, 451 (D.D.C. 1952).

<sup>8</sup> MAGNA CARTA, c.42.

<sup>9</sup> 1 BLACKSTONE, COMMENTARIES \*265.

<sup>10</sup> 73 U.S. (6 Wall.) 35 (1867).

<sup>11</sup> 165 U.S. 578, 589. (1896).

of decisions and is the first case wherein the right to travel is held to be protected by the Fifth Amendment because it is a natural right of man.<sup>18</sup>

The *ratio decidendi* of the instant case is based on the court's determination that the right to international travel is included in the term "liberty" in the Fifth Amendment. The reasons given for this are not clearly explained.

First of all, the court says that denial of a passport causes a deprivation of liberty that a citizen otherwise would have.<sup>19</sup> This liberty that a citizen would otherwise have obviously does not mean the mere physical ability to act, for then all of man's physical actions would be included in the "liberty" of the Fifth Amendment and a person might invoke the due process clause whenever a law prevented him from taking any such action. Neither is the word liberty used in the Hohfeldian sense of a mere absence of a regulation of conduct by the command of society,<sup>20</sup> for the due process clause is only applicable when a person's conduct is regulated.

The real meaning of the court's expression is indicated by the statement that travel should be included under "liberty" because it is a "natural right."<sup>21</sup> What was meant is perhaps explained by the classical natural law idea of natural rights:

His eternal goal, the salvation of his soul, imparts to the person an ultimate transcendence. Thence result certain natural rights for the individual person in relation to the state. These rights are not first conferred

upon him by the positive law; they are at most explicitly recognized by it. Thus it is not in virtue of this recognition that such rights have force; they are recognized because they are valid absolutely.<sup>22</sup>

There are certain principles of classical natural law which are obvious dictates of man's rational nature; they are self-evident, absolute and universal. The *primary principle* may be stated as "What is good is to be done, and what is evil is to be avoided."<sup>23</sup> The *secondary principles* of the natural law are the immediate specifications of the primary principles and are expressed generally in the Decalogue.<sup>24</sup> These principles are, in effect, natural law duties, and the correlatives of these duties are natural rights. Thus:

Natural law does indeed imply the existence of some human rights which are absolute and inalienable, such as the right to life, worship, marriage, property . . . locomotion . . . etc. These are absolute in the sense that they derive from human nature; they are not mere hand-outs from the state; the state is bound to protect them and cannot destroy them even though, by physical force the state has sometimes prevented their exercise. They are not absolute in the sense that they are unlimited in scope. It is a commonplace in classical natural law philosophy that human rights, even the most fundamental mentioned above, are *limited*. They are limited in the sense that they are subject to specification, qualification, expansion and contraction . . . as the equal rights of others and the demands of the *common good* from circumstance to circumstance, and from time to time reasonably indicate.<sup>25</sup>

It seems clear that there are situations in which the right to travel may not be denied at all. For instance, a Jewish person in Nazi Germany during World War II or a Hungarian

<sup>18</sup> See also *Boudin v. Dulles*, 136 F. Supp. 218 (D.D.C. 1955).

<sup>19</sup> *Shachtman v. Dulles*, 225 F. 2d 938, 941 (D.C. Cir. 1955).

<sup>20</sup> Corbin, *Legal Analysis and Terminology*, 29 YALE L. J. 163 (1919).

<sup>21</sup> See note 19 *supra*.

<sup>22</sup> ROMMEN, *NATURAL LAW* 243 (1948).

<sup>23</sup> Kenealy, *Whose Natural Law?*, 1 CATHOLIC LAWYER 259, 262 (Oct. 1955).

<sup>24</sup> *Ibid.*

<sup>25</sup> *Id.* at 263.



in Budapest under the present Communist regime would have a natural right to leave the country since if he stayed he would be completely deprived of some of his fundamental natural rights, *e.g.*, life, worship, property. Pope Pius XII in His 1952 Christmas Eve Address<sup>26</sup> said that when married people wish to remain faithful to the immutable laws of life established by their Creator, or when, to safeguard this fidelity, they seek to free themselves from the straits in which they are bound by their own country, and they find no other remedy except emigration, their natural right to emigrate or immigrate should not be annulled or impeded on the pretext of a common good falsely understood or applied.

It is also clear that under certain circumstances a government may rightfully prevent a person from traveling outside the country. For example, an individual may wish to leave his country, but if in leaving the country he would leave a family without any means of support and the burden of support would fall on the state, he might be prevented from doing so. Or if an American scientist entrusted with top atomic secrets wished to travel to Russia and the government had reason to believe that he might divulge these secrets to persons hostile to the government of the United States, then, in the interest of national security, he might rightfully be prevented from leaving.

In conclusion, the right to travel outside the country may be included in the natural right to locomotion. Whether or not a person may be prevented by the government from exercising the right depends on many factors. The basis of the determination is a reasonable relation between the wants and rights of the individual and the rights of

<sup>26</sup> 45 ACTA APOSTOLICAE SEDIS 33, 41-42 (1952).

others and the common good within the scope of governmental protection.

The word "liberty" in the Constitution strictly construed may not be so extensive as to make the due process clause applicable in every case in which a person is denied the liberty or freedom of exercising a natural right (for then there would be little reason for including "life" and "property" in the clause since these are also natural rights). The word has, however, been construed to include the right to locomotion<sup>27</sup> and international travel may be included in this right.

If the Constitution has recognized the right to liberty as a principle of natural law,<sup>28</sup> then it remains for the legislature and the courts to apply this general principle to specific cases, for it is accepted in Scholastic Philosophy that ". . . as regards the general principles . . . truth or rectitude is the same for all, and is equally known by all" and "the natural law, as to general principles, is the same for all."<sup>29</sup> However, in specific cases, for many reasons, men are unable to determine what is to be inferred from general principles.<sup>30</sup> This is one of the functions of positive law.<sup>31</sup>

The court in the instant case indicated that the requirements of both procedural and substantive due process must be met

<sup>27</sup> Kenealy, *supra* note 23 at 263-64.

<sup>28</sup> The "liberty" mentioned in the Constitution in the Fifth and Fourteenth Amendments is a very general term but it is clear, from looking at the Declaration of Independence, that it was thought of as embracing the inherent rights in men bestowed upon them not by Acts of Congress, but "by their Creator." See *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1884) (concurring opinion). The Due Process clause intended to give political effect to this declaration of rights. See *Slaughter House Cases*, 83 U.S. (16 Wall.) 36 (1872).

<sup>29</sup> SUMMA THEOLOGICA, I-II, q. 94, art. 4.

<sup>30</sup> *Id.*, I-II, q. 94, art. 2.

<sup>31</sup> ROMMEN, NATURAL LAW 257 (1948).

wherever the government restricts the exercise of a right guaranteed by the Constitution.

Procedural due process requires that the reasons for governmental restriction and the arguments of the citizen affected thereby must be made known at a hearing at which the applicability of the general principles of law to the facts of the specific case may be determined. This requirement was fulfilled in the instant case.

The court then added that even if a hearing is had and a person is still denied a passport, substantive due process requires that the reason for said denial be not arbitrary. In making this determination, it seems that the court has advanced our governmental system a little closer to the ideal in which the relation between governments and the

natural rights of individuals may be properly ascertained and balanced.

In none of the cases to date has it been made clear on just what specific grounds a passport may be denied.<sup>32</sup> But it is certain that the right to travel and thus the right to receive a passport is something of which men may not be deprived lightly or without sufficient reason consistent with the law of the land embodied in the Constitution of the United States.

<sup>32</sup> The instant case said only that the mere fact that a person was a member of an organization on the Attorney General's list was *not* a basis for denial of a passport. It seems improbable that the problems of just what *are* sufficient grounds for denial will remain unsolved in the very near future since the present practice of the State Department seems to be to issue a passport to anyone who threatens court action. See Boudin, *The Constitutional Right to Travel*, 56 COLUM. L. REV. 47, 61 (1956).

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### Segregation (*continued*)

premise of revealed religion. But, in conclusion, allow me to add, in my capacity as a Catholic priest, that there is no question whatsoever as to the position of the Catholic Church on the issue of compulsory segregation.

The position of the Catholic Church has been clearly and courageously stated by His Excellency, the Archbishop of New Orleans. The philosophy of the natural law has always been embraced and elevated by the theology of the Church Universal. The fundamental principle of the essential equality and dignity of every human being, and the essential unity of the entire human race, has been sanctified by the sacrifice of Calvary, illumined by the dawn of Easter, emblazoned by the fires of Pentecost, and heralded to the corners of the earth by

the voice of Catholicism — proclaiming our common origin in the First Adam, our common redemption by the Second Adam, and our common sanctification in the Mystical Body of Christ. Popes, archbishops, bishops, dogmatic and moral theologians, the unanimous judgment of the teaching Church is that compulsory segregation is objectively and morally wrong. It is a cancer in the body politic. It is a desecration of Christian civilization. We like to think that God is on the side of our American way of life; but it is true only to the extent that our American way of life is on the side of Him Who said, "*I am the way, the truth and the life.*" In the eyes of God there is neither white nor black nor red nor yellow nor brown; neither Jew nor Gentile nor Barbarian nor Cythian; but all are brothers in Christ Jesus.