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In spite of this the Convention may be regarded as a document of considerable practical and moral significance.

As to its practical value: despite the limitations listed above, it is estimated that there still remain a considerable number of cases in which the Convention will serve as the sole means of attaining the ends of justice. There are still many people who can benefit by the Convention, and it will enable them to solve long-delayed problems of marriage, adoption, and property.

The theoretical significance and moral value of the Convention is still greater. The Conference which adopted the Convention was the first conference of states called by the General Assembly of the United Nations itself, and the Convention was the first within the framework of the United Nations, the subject of which did not fit into the customary classifications of United Nations' problems. The declaration of death of missing persons would appear to be strictly a problem in private law.[114]

The Convention thus constitutes a first step in various directions. Such first steps may sometimes have but a limited practical value: their true importance lies in the fact of their being first steps. In this regard the Convention certainly possesses a far-reaching moral value. It is a moral tribute paid by the United Nations and its member states to the victims of hatred and misery, of slave labor, mass killing and extermination. Looked at from this angle, the Convention is a grim reminder of the unparalleled tragedies of modern warfare and of political bias and prejudice. In order to help survivors of the millions who disappeared in World War II, at least *some* measure of international cooperation has been reached in the Convention. Doubtless this is a step forward sincerely to be welcomed.

ANDREW FRIEDMANN.*

THE HUMAN RIGHTS PROVISIONS OF THE U.N. CHARTER AND LOCAL COURTS

Introduction

The international law of the past—a system of jural relations between absolute sovereigns—may be entering upon a new era; one in which rapid sociological and economic changes are acknowledged

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[114] See Opening Address by the Assistant Secretary-General, Ivan Kerno, at the Conference on March 15, 1950. A. Conf. 1/Sr. 1 at 3 (March 15, 1950).

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and rights are accorded to individual human beings as well as sovereign states. Responsible for this emerging concept, is the United Nations Charter which has effected many advances in the substantive law of nations.[1] Since the United Nations professes to be an organization formed by "We the peoples of the United Nations," [2] it seems clear that it is not merely composed of absolutely separate sovereigns as supposed by Grotius in his formulation of modern international law.

This concept has provided fertile fields for scholars and theorists [3] but the question becomes less academic with passing time. When the United States Supreme Court refers to Charter-given rights,[4] and various inferior courts rely on them as the basis for direct holdings [5] or even mention them by way of dicta,[6] it is fitting that the status and effect of the Charter in our municipal and constitutional law be examined once again. In this discussion, therefore, it is proposed to consider the applicable human rights provisions, the status and applicability of the Charter, court decisions invoking it, and the treatment it may receive in the future so far as current trends indicate.

The Charter Provisions

The unprecedented United Nations Conference which convened at San Francisco on April 25, 1945, brought together the representatives of governments all over the world. They reconciled their diverse backgrounds and practices and on June 26, 1945 gave to the world the present United Nations Charter. It was ratified by the Senate of the United States on July 28, 1945 and became effective on October 4th of the same year when the requisite number of ratifications were received.[7]

Acknowledging the fact that peace means more than freedom from war, the Charter accounts for the economic and social causes of unrest, and throughout the document are found provisions promot-

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[1] "Certain subjects covered by the Charter were not previously covered by international legislation. . . . The principal of these subjects is that of human rights." PROC. AMER. SOC'Y INT'L L. 11 (1948).

[2] U.N. CHARTER PREAMBLE. The actual drafting, however, was done by ". . . our respective Governments, through representatives assembled in the city of San Francisco. . . ."

[3] Urging individual rights in international law, see JESSUP, A MODERN LAW OF NATIONS 137 (1948); LAUTERPACHT, AN INTERNATIONAL BILL OF RIGHTS OF MAN (1948) *passim*.

[4] Oyama v. California, 332 U. S. 633, 650 (1948) (concurring opinion).

[5] Fujii v. California, 217 P. 2d 481 (Cal. 1950); *Re* Drummond Wren, 1945 O. R. 778, 1945 4 D. L. R. 674 (1945).

[6] Namba v. McCourt, 185 Ore. 579, 204 P. 2d 569, 579 (1949).

[7] For the background and general structure of the United Nations and its effect on international law, see Re, *International Law and the U.N.*, 21 ST. JOHN'S L. REV. 144 (1947).

ing human rights and fundamental freedoms.[8] The first of these are found in the Preamble in which the "people" of the United Nations reaffirm their ". . . faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . . ." Another is contained in the statement of the Organization's Purposes and Principles wherein it is pledged, "To achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . . ." [9] Such language reappears throughout.[10] Not only is the Organization itself obligated, but all member states bind themselves to take joint and separate action in cooperation with the Organization for the achievement of its purposes.[11] To supplement the human rights provisions in the Charter, the Economic and Social Council, pursuant to Article 68,[12] created a Commission for the Promotion of Human Rights. That Commission drafted a Universal Declaration of Human Rights which was adopted by the General Assembly on December 10, 1948.[13]

The Status of the Charter

There are absolutely no doubts that the United Nations' Charter is a treaty. Likewise, it is clear that in entering into this treaty our

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[8] For a commentary on these provisions, see ROBINSON, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE CHARTER OF THE UNITED NATIONS (1948) *passim.*

[9] U.N. CHARTER Art. 1, ¶ 3.

[10] These purposes are executed in the obligation of the General Assembly to initiate studies and make recommendations for the purpose of ". . . promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." U.N. CHARTER Art. 13, ¶ 1b. This undertaking is reiterated in Article 55, which, "With a view toward the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights . . . ," declares in paragraph (c) thereof that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

[11] U.N. CHARTER Art. 56. *Query:* Since the pledge is not "to take joint and separate action *and* cooperate with the Organization," but is rather to "take joint and separate action *in cooperation with* the Organization," is it necessary that the Organization initiate the action?

[12] This article authorizes the creation of commissions for the performance of the Council's functions. By Article 62, paragraph 2, the Economic and Social Council is empowered to ". . . make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."

[13] 43 AMER. L. INT'L L. SUPP. 127 (1949). The Declaration was proclaimed by the General Assembly "as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society . . . shall strive . . . to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their effective recognition and observance. . . ."

Government was well within the scope of its constitutional authority, for it has long been clear that ". . . the treaty power of the United States extends to all proper subjects of negotiation between our government and the governments of other nations. . . ." [14] However, in order to fully comprehend the impact of the Charter on our local courts, it must be analyzed in view of the "supremacy clause" [15] of our Federal Constitution which proclaims that all treaties shall become the supreme law of the land and bind the courts in every state. The plain words of this constitutional provision have repeatedly been confirmed by the Supreme Court. The Court has also held that a treaty is no less supreme if it regulates the private relations which are normally within the power of the states, and which, but for the treaty, would be beyond the control of the National Government.[16]

A condition precedent to the incorporation of any treaty into our municipal law is that the treaty in question must be self-executing.[17] In the words of Chief Justice Marshall:

Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature,

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[14] Geofroy v. Riggs, 133 U. S. 258, 266 (1889). The court at page 267 has this to say: "The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. . . . But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country." See Boyd, *The Expanding Treaty Power,* 6 N. C. L. REV. 428 (1928); Harris, *Treaties Under the Constitution and International Law,* 54 DICK. L. REV. 417 (1950); Kuhn, *The Treaty-Making Power and the Reserved Sovereignty of the States,* 7 COL. L. REV. 172 (1907); Lenoir, *Treaties and the Supreme Court,* 1 U. OF CHI. L. REV. 602 (1934); Magnusson, *Our Membership in the United Nations and the Federal Treaty-Power Under the Constitution,* 34 VA. L. REV. 137 (1948); Note, 37 COL. L. REV. 1361 (1937).

[15] U. S. CONST. Art. VI, ¶2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

[16] Missouri v. Holland, 252 U. S. 1416 (1920). In 1913 Congress passed a Migratory Bird Act setting a closed season on the taking of migratory birds. This Act was held unconstitutional but the same subject was covered in a treaty entered into between Great Britain and the United States. To carry out the treaty provisions, Congress passed the Migratory Bird Act of July 3, 1918. It was this Act that was declared constitutional in Missouri v. Holland. For a criticism of this decision, see Black, *Missouri v. Holland—A Judicial Milepost On the Road to Absolutism,* 25 ILL. L. REV. 911 (1931).

[17] See Henry, *When is a Treaty Self-Executing,* 27 MICH. L. REV. 776 (1929).

whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial; and the legislature must execute the contract before it can become a rule for the Court.[18]

Although the Charter in the most indisputable terms shows an intent to carry out equality in daily living for individual men and women all over the world, before our courts can apply these human rights provisions as legal principles, it must be demonstrated that they have become part of the law of the land, or in other words, that they are self-executing. A single treaty may contain both kinds of provisions, some of which are, and some of which are not self-executing.[19] There is reason to believe that those parts of the Charter which deal with the legal capacity, privileges, and immunities of the United Nations, as set forth in Articles 104 and 105 of the Charter, are self-executing.[20] However, apart from the fact that the decisions which will be discussed hereafter, have so assumed, the human rights provisions have never received such an interpretation. Thus it would seem that they require legislative implementation before they can become rules for the courts.

Before proceeding to a review of the cases, it is well to ponder for a moment the jurisdictional limitations found in the Charter itself which forbids intervention ". . . in matters which are essentially within the domestic jurisdiction of any state . . . ." [21] Wherever the clause applies, the Organization is powerless to act, but it should be borne in mind that the words "domestic jurisdiction" are possessed of no intrinsic or absolute meaning and they are neither self-defining nor have they ever been given a very precise interpretation.[22] The limits of the "essentially domestic" jurisdiction of a state are flexible. Matters which are at one particular time universally considered within these limits, might at another point of time, be propelled into the international sphere by a combination of circumstances. That the area of human rights is one of these matters, there is little doubt.[23]

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[18] Foster v. Nielson, 2 Pet. 253, 314 (U. S. 1829).

[19] Aguilar v. Standard Oil of New Jersey, 318 U. S. 724, 738 (1943).

[20] Curran v. City of New York, 191 Misc. 229, 234, 77 N. Y. S. 2d 206, 212 (Sup. Ct. 1947).

[21] U.N. CHARTER Art. 2, ¶7.

[22] See BENTWICH AND MARTIN, A COMMENTARY ON THE CHARTER OF THE UNITED NATIONS 10-18 (1950); Cohen, *Human Rights Under the United Nations' Charter*, 14 L. & CONTEMP. PROB. 430, 434; Gross, *Impact of the United Nations Upon Domestic Jurisdiction*, 18 DEP'T STATE BULL. 259 (1948); Kelsen, *Limitations on the Functions of the United Nations*, 55 YALE L. J. 997 (1946); Note, *The "Domestic Jurisdiction" Limitation in the United Nations' Charter*, 47 COL. L. REV. 268 (1947).

[23] B. V. Cohen of the American delegation to the General Assembly asserts: "We did not consider that the injunction against intervention in domestic affairs was intended to put an absolute bar on the consideration of matters relating to human rights in connection with the appropriate consideration of conditions affecting the friendly relations between states. . . .

However, it is not of pressing importance in the present discussion because that limitation by its terms circumscribes only the United Nations and imposes no limitation on the courts of the member states.[24]

The Decisions Dealing With the Human Rights Provisions

When one considers the wide variety of situations in which a plaintiff might wish to rely on the human rights provisions, it is surprising that the Charter hasn't been placed before local courts much more often than has actually been the case.[25] The first case to be decided squarely on the rights and immunities granted by the United Nations' Charter, was Re *Drummond Wren*.[26] In this Canadian case, a landowner applied to have declared invalid a covenant forbidding sale of his land "to Jews or persons of objectionable nationality." In striking down the covenant as repugnant to the Charter, the court used a technique of the civil law: reasoning by analogy from statutes and ascertaining public policy from legislative enactments rather than from judicial decisions.

In the United States, the first significant mention of the Charter's human rights provisions came in a concurring opinion of the United States Supreme Court, which was rendered in a case involving the

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"We frankly stated that it was not easy to determine with precision what constitutes intervention in domestic affairs, or what sort of deliberate and systematic disrespect of human rights takes a matter out from the realm of domestic concern and makes it a matter of international concern. . . .

"We did, however, give warning that it was part of statesmanship to proceed cautiously in the delicate field of human rights and fundamental freedoms so as to avoid serious repercussion on sensitive domestic policies and strong reaction against wholesome international efforts in this field." Cohen, *supra* note 22 at 434-5. The suppression of civil and religious liberties and the persecution of church leaders by Hungary and Bulgaria, and the discrimination against persons of Indian origin by the Union of South Africa, have been held not to be "essentially within the domestic jurisdiction" of those states.

Consider the following: It seems ". . . that the Organization is entitled to scrutinize . . . the observance of human rights in each member state individually. And no member can contend that recommendations on these matters are beyond the scope of the Organization . . . . The Organization must see that human rights and fundamental freedoms exist not only on paper, but also in practice. . . ." BENTWICH AND MARTIN, *op. cit. supra* note 22, at 117.

[24] Thus it would seem that the New York Supreme Court in Kemp v. Rubin, 188 Misc. 310, 315, 69 N. Y. S. 2d 680, 686 (1947), was incorrect in asserting that the "domestic jurisdiction" clause of the Charter made it improper to employ it as a defense in a suit to enforce a restrictive covenant.

[25] See Sayre, *Shelley v. Kraemer and United Nations Law*, 34 IOWA L. REV. 1 (1948).

[26] 1945 O. R. 778, 1945 4 D. L. R. 674. See Sayre, *United Nations Law*, 25 CAN. B. REV. 809, 821 (1947), where the writer states: ". . . *Re Drummond Wren* . . . is a landmark case, which . . . will be held in honour for the indefinite future. . . . [It] inevitably gives us a judicial new start . . . for the vigour and growth of jurisprudence and legal philosophy everywhere."; 59 HARV. L. REV. 803 (1946).

validity of the Alien Land Law of California.[27] The Court had repeatedly held that such legislation violated no constitutional rights,[28] but in *Oyama v. California*, grave doubts were cast upon its validity.[29] The case arose when California brought escheat proceedings against the defendants, an American-born son of Japanese parents and his alien father, claiming that two parcels of land which the father had bought for the son had escheated to the state. The statute provided that an intent to evade its provisions was to be presumed when the consideration for the land was paid by an ineligible alien. It was this latter presumption that the majority of the Court found obnoxious, and so it was deemed unnecessary to re-examine the constitutionality of the basic provisions, the validity of which the Court assumed *arguendo*. The concurring opinion of Mr. Justice Murphy, in which Mr. Justice Rutledge joined, after outlining the discriminatory features of the law and examining its embarrassing history,[30] added the following:

> Moreover, this nation has recently pledged itself, through the United Nations' Charter, to promote respect for, and observance of human rights and fundamental freedoms for all without discrimination as to race, sex, language, and religion. The Alien Land law stands as a barrier to the fulfillment of that national pledge. Its inconsistency with the Charter, which has been duly ratified and adopted by the United States, is but one more reason why the statute

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[27] Oyama v. California, 332 U. S. 633, 650 (1948); see 36 CALIF. L. REV. 320 (1948); 42 AMER. J. INT'L L. 475 (1948).

[28] *E.g.*, Cockrill v. California, 268 U. S. 258 (1924); Frick v. Webb, 263 U. S. 326 (1923); Webb v. O'Brien, 263 U. S. 313 (1923); Porterfield v. Webb, 263 U. S. 225 (1923); Terrace v. Tompson, 263 U. S. 197 (1923) (leading case). See Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 COL. L. REV. 61 (1935); McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CALIF. L. REV. 7 (1947); Note, *Validity of Alien Land Law*, 92 L. ED. 281 (1948). From the general rule of the common law that title to real property must be acquired and passed according to the *lex rei sitae*, the doctrine resulted that subject to treaty regulations, the title of aliens to land within the several states is a matter of state regulation and dependent upon the laws of the state wherein the land is situated. Applying this doctrine and proceeding on the theory that a state has the right to preserve the ownership, occupancy, and control of its lands for the benefit of its citizens, these Alien Land laws were enacted to exclude aliens ineligible for citizenship from acquiring agricultural land.

[29] The Attorney-General of California interpreted the *Oyama* case as ending the utility of the Alien Land Law and said that he thought that if the question of its validity came before the Court, the justices "no doubt would invalidate the law as unconstitutional." San Francisco Chronicle, Jan. 28, 1948, p. 2, col. 6, cited in 36 CALIF. L. REV. 320, 324 (1948).

[30] ". . . The Alien Land law from its inception has proved an embarrassment to the United States Government. . . . It has overflowed into the realm of foreign policy; it has had direct and unfortunate consequences on this country's relations with Japan . . . . The situation was so fraught with danger that three Presidents of the United States were forced to intervene. . . . A Secretary of State made a personal plea that the passage of the law might turn Japan into an unfriendly nation." Oyama v. California, note 27 *supra*, at 672-3.

must be condemned. And so in origin, purpose, administration, and effect, the Alien Land law does violence to the high ideals of the Constitution of the United States and the Charter of the United Nations.[31]

Sensing the prevailing attitude, the Oregon Supreme Court shortly thereafter ruled the Alien Land Law of that state unconstitutional as violative of the equal protection clause.[32] In addition and by way of dicta, the court referred to our pledge and treaty obligations under the Charter. Up to this point, no American court had yet invoked the human rights provisions as controlling. That remained for a lower California court to undertake in *Fujii v. California.*[33]

The Fujii Case

The plaintiff, a Japanese alien ineligible to citizenship, acting pursuant to a California statute [34] prayed that the court determine whether an escheat had occurred as to real property acquired by him.[35] The court held that the provisions of the Alien Land Law, viewed in light of the fact that expansion by Congress of the classes eligible for citizenship has left only Japanese aliens ineligible to own real property and the fact that the restrictions are actually referable to race or color, are unenforceable because contrary to the letter and spirit of the United Nations' Charter. The court indicated that although the law had always been upheld as against charges of unconstitutionality, the Charter, upon ratification, became supreme law and every state in the union is required ". . . to accept and act upon the Charter according to its plain language and its unmistakable purpose and intent." [36] The court rested its decision entirely on the Charter and adverted in passing to the Declaration of Human Rights [37] which, in expounding the views of the parties to the Charter, ". . . implements and emphasizes the purposes and aims of the United Nations. . . ." [38] The *Fujii* case has provoked considerable comment in the legal profession and has been both criticized and acclaimed in turn. While some will feel that the decision heralds the time when United Nations law will control in relations among peoples and states

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[31] Oyama v. California, note 27 *supra* at 673.
[32] Namba v. McCourt, note 6 *supra.*
[33] *Supra* note 5.
[34] CAL. CODE CIV. PROC. § 738.5.
[35] The Alien Land law is to be found in CAL. GEN. LAWS Act 261, as amended.
[36] Fujii v. California, note 5 *supra* at 486.
[37] See note 13 *supra.*
[38] Fujii v. California, note 5 *supra* at 488. On petition for rehearing which was denied, Fujii v. California, 218 P. 2d 595 (Cal. 1950), the court made it clear that it realized that the Declaration was not a treaty and was not of binding force. It stated that the Declaration was not relied on but was merely used in emphasis of the Charter. An appeal was filed June 2, 1950.

everywhere,[39] others have criticized the holding as being ". . . based on a misconception of the human rights provisions. . . ." [40]

It is well settled that the Declaration of Human Rights is not a treaty and imposes no legal obligations on this country. On the day before the adoption of the Declaration, the representative of the United States, Mrs. Franklin D. Roosevelt, stated:

> . . . My government has made it clear in the course of the development of the Declaration that it doesn't consider that the economic and social and cultural rights stated in the Declaration imply an obligation on governments to assure the enjoyment of these rights by direct governmental action. . . .[41]

But the fact that the Declaration has not been incorporated into our national law and is in no sense binding, cannot be employed as an argument against the *Fujii* holding, for although the opinion contained a passing reference to the Declaration, in denying a petition for rehearing, it was expressly stated:

> . . . we did not place reliance on the Declaration in support of the conclusion reached. There is no intimation in the opinion that the Declaration is a treaty, for it is not, or that it has any binding force. . . .[42]

Hence, whatever criticism is directed against the holding, must result from the court's misconstruction of the Charter itself. It is admitted that the human rights and fundamental freedoms referred to throughout are nowhere defined in the Charter. Further, it is true that the Preamble and Article 1, paragraph 3 *supra,* merely state the general purposes of the Organization and impose no obligations on this country to take any specific actions. So, also, Article 55 [43] simply states the ends to be promoted and is in no respect binding on Member Nations. It would therefore seem that the correctness of the holding must ultimately rest upon the pledge ". . . to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." [44] Although the "domestic jurisdiction" limitation would not inhibit action by courts of signatory states, there must be some legal sanction before the courts should protect the non-defined rights alluded to in the Charter. Articles 55 and 56 have never been construed as self-executing, nor does the court in the *Fujii* case expressly so interpret them. If they are not, and the *Foster v. Nielson* [45] doctrine is followed, then the human rights provisions are not incorporated into our municipal law, and

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[39] See Sayre, notes 25 and 26 *supra.*

[40] Hudson, *Charter Provisions on Human Rights in American Law,* 44 AMER. J. INT'L L. 543 (1950). See also Editorial, *The United Nations Charter and the Constitution,* 36 A. B. A. J. 652 (1950).

[41] 19 DEP'T STATE BULL. 751 (1948).

[42] Fujii v. California, 218 P. 2d 595, 596 (1950).

[43] See note 10 *supra.*

[44] U.N. CHARTER Art. 56. But see *query* in note 11 *supra.*

[45] See note 18 *supra.*

apart from action taken by Congress to implement them, they are not for the courts to apply. Regardless of whether one agrees with the object sought to be accomplished by it, it may be contended that the California court invoked the Charter provisions prematurely.

The Future

The consequences of the *Fujii* holding, if affirmed, have been contemplated with trepidation. It is feared that ". . . it will furnish a treaty basis . . . for claiming invalidation of state laws that make any distinction or classification on account of sex, race, color, language, property, birth status, political or other opinion." [46] This, it seems, is an unduly extreme view to take, particularly in the light of the well established power of Congress to nullify the domestic effect of treaties by legislation.[47] It has also been urged that since Congress has power to legislate under treaties,[48] legislation such as the proposed Federal Fair Employment Practices Act may need no basis other than the United Nations' Charter as has already been suggested by the President's Commission on Civil Rights. Such an interpretation of the Charter, it is felt in some circles,[49] might produce great uncertainty and unbalance in our federal and state legal system.

These arguments strongly resemble those propounded against the Covenant on Human Rights,[50] now being drafted by the Human Rights Commission of the United Nations, and designed to form the second part of an International Bill of Rights of which the first part is the Declaration. The Covenant is fundamentally different from the Declaration as it is designed to be a treaty with self-executing provisions which, when ratified, will unquestionably be supreme law, paramount to all local law in conflict with it. The Covenant has provoked considerable discussion — much in its favor,[51] and much opposed.[52]

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[46] 36 A. B. A. J. 652 (1950).

[47] The Chinese Exclusion Case, 130 U. S. 581 (1889). Other methods are probably available to disencumber ourselves of the domestic effect of treaty obligations. See CORWIN, THE PRESIDENT, OFFICE, AND POWERS 243 (1940).

[48] Missouri v. Holland, note 16 *supra.*

[49] See Editorial, 36 A. B. A. J. 652 (1950).

[50] The text of the proposed Covenant may be found in 34 A. B. A. J. 910 (1948).

[51] See, *e.g.,* Hyman, *Constitutional Aspects of the Covenant,* 14 L. & CONTEMP. PROB. 451 (1949); McDougal and Leighton, *The Rights of Man in the World Community: Constitutional Illusions Versus Rational Action,* 14 L. & CONTEMP. PROB. 490 (1949); Menin, *The Universal Declaration of Human Rights, A Challenge to America,* 26 DICTA 122 (1949); Moskowitz, *Is the U.N.'s Bill of Human Rights Dangerous? A Reply to President Holman,* 35 A. B. A. J. 283 (1949).

[52] Holman, *An "International Bill of Rights": Proposals Have Dangerous Implications for U. S.,* 34 A. B. A. J. 984 (1948); Holman, *President Holman's Comments on Mr. Moskowitz's Reply,* 35 A. B. A. J. 228 (1949); Holman,

At the present we do not deal with the binding Covenant. Of course, it is to be wished that the principles embodied in the Charter would be universally assumed as obligatory in the relations amongst men and governments everywhere. However, unless and until the human rights provisions are declared self-executing, our courts are not justified in anticipating such obligations; for, rather than being supreme law, the Charter provisions are at the most an indication of the national public policy. They must therefore await legislative action for only Congress can properly determine how this Government is to "cooperate" with the United Nations.

THE BAILEE'S RIGHT TO RECOVER FULL DAMAGES: HISTORICALLY AND CRITICALLY

A person in possession of personal property has the powers of an owner as against all the world, save the man with a better right to possession.[1] This rule of law has always been applied to allow takers[2] and finders[3] full damages against third persons who converted or damaged the goods. Their right to recover a sum over and above their own interest in the chattel is based solely on their possession. Certainly, any other principle would be "an invitation to all the world to scramble for possession."[4]

There are two different opinions, however, as to what is the basis of the *bailee's* right to recover full damages from a third person tortfeasor. One view is that this right exists because of his posses-

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International Proposals Affecting So-Called Human Rights, 14 L. & CONTEMP. PROB. 479 (1949); Rix, *Human Rights and International Law: Effect of the Covenant Under Our Constitution,* 35 A. B. A. J. 551 (1949). There has been comment on the Covenant in almost every issue of the AMERICAN BAR ASSOCIATION JOURNAL since March, 1948. The arguments against the Covenant may be summed up in three points.

1. It is an invasion of the domestic jurisdiction of the United States.
2. This country's participation is unconstitutional.
3. Participation is dangerously unwise as our form of government is threatened.

In the opinion of the writer of this note, the authorities cited in note 51 *supra* have succeeded in refuting these charges.

[1] HOLMES, THE COMMON LAW 246 (1881); POLLOCK & WRIGHT, POSSESSION IN THE COMMON LAW 93 (1888); RESTATEMENT, TORTS § 895 (1939).

[2] Anderson v. Gouldberg, 51 Minn. 294, 53 N. W. 636 (1892); *accord,* New England Box Co. v. C & R Const. Co., 313 Mass. 696, 49 N. E. 2d 121 (1943).

[3] Armory v. Delamirie, 1 Strange 505, 93 Eng. Rep. 664 (1722); Deaderick v. Aulds, 86 Tenn. 14, 5 S. W. 487 (1887).

[4] Webb v. Fox, 7 Term Reports 392, 397, 101 Eng. Rep. 1037, 1040 (1797).