

In *Oyama v. California*,<sup>33</sup> the Court, in a single sentence, agreed with the contention of a native-born youth that a state Alien Land Law that resulted in the forfeiture of property purchased in his name with funds advanced by his parent, a Japanese alien ineligible for citizenship and precluded from owning land, deprived him “of his privileges as an American citizen.” The right to acquire and retain property had previously not been set forth in any of the enumerations as one of the privileges protected against state abridgment, although a federal statute enacted prior to the proposal and ratification of the Fourteenth Amendment did confer on all citizens the same rights to purchase and hold real property as white citizens enjoyed.<sup>34</sup>

In a doctrinal shift of uncertain significance, the Court will apparently evaluate challenges to durational residency requirements, previously considered as violations of the right to travel derived from the Equal Protection Clause,<sup>35</sup> as a potential violation of the Privileges or Immunities Clause. Thus, where a California law restricted the level of welfare benefits available to Californians who have been residents for less than a year to the level of benefits available in the state of their prior residence, the Court found a violation of the right of newly arrived citizens to be treated the same as other state citizens.<sup>36</sup> Despite suggestions that this opinion will open the door to “guaranteed equal access to all public benefits,”<sup>37</sup> it seems more likely that the Court is protecting the privilege of being treated immediately as a full citizen of the state one chooses for permanent residence.<sup>38</sup>

## DUE PROCESS OF LAW

### Generally

Due process under the Fourteenth Amendment can be broken down into two categories: procedural due process and substantive due process. Procedural due process, based on principles of “fundamental fairness,” addresses which legal procedures are required to

(a provision in a state constitution to the effect that low-rent housing projects could not be developed, constructed, or acquired by any state governmental body without the affirmative vote of a majority of those citizens participating in a community referendum).

<sup>33</sup> 332 U.S. 633, 640 (1948).

<sup>34</sup> Civil Rights Act of 1866, ch. 31, 14 Stat. 27, now 42 U.S.C. § 1982, as amended.

<sup>35</sup> See *The Right to Travel*, *infra*.

<sup>36</sup> *Saenz v. Roe*, 526 U.S. 489 (1999).

<sup>37</sup> 526 U.S. at 525 (Thomas, J., dissenting).

<sup>38</sup> The right of United States citizens to choose their state of residence is specifically protected by the first sentence of the 14th Amendment “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.”