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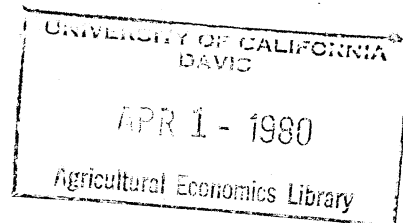
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Selected Economic and Political Issues  
of Alien Ownership of United States Farmland

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## I. Introduction

A few years past, agriculturists were concerned about the extinction of the family farm due to increasing land prices, high interest rates, droughts, and low market prices for farm commodities. The fear that corporate ownership would squeeze the family farm out of the market prompted many states to enact legislation prohibiting corporate ownership of agricultural land.

Recently, however, a new fear has arisen. The emergence of certain oil-producing countries as world-wide economic powers has led to the belief that these nations will use their newly-acquired wealth to dominate farm production in the United States.

Are these newly-arisen anxieties concerning foreign control of U.S. farmland justified? Will the U.S. benefit from the increasing number of foreign land purchases? Should additional legislation be enacted?

## II. U.S. Advantages of Foreign Land Purchases

### Stability of Capital Transfer

In contrast to uncertain investments, foreign purchases of land are a stable addition to the national wealth. The purchase of land by foreigners transfers capital to the United States during a capital shortage. The capital transfer bolsters the economy just as though the foreigner had loaned money or shipped goods to the U.S. The economic stability provided by this transfer stimulates additional investment of capital which, in turn, provides more stability.

### Gains in Foreign Relations

The capitalistic nature of American economics often creates an image of having an abundance of capital while at the same time being desparate to dispose of it. As a result of this viewpoint, U.S. capital is regarded with contempt and hesitancy by foreign nations. By allowing aliens to acquire agricultural land, the United States acknowledges its need to import foreign capital. United States capital is then treated with more respect abroad.

### III. U.S. Disadvantages of Foreign Land Purchases

#### Weaker Political and Social Control

Landownership has always been associated with an expression of power. The amount of land that a country acquires is a symbol of that nation's wealth. By allowing aliens to replace American citizens as landowners, the United States loses its national sovereignty. In addition, absentee owners contribute little to the social and civic environment and are less sensitive to the physical environment. Foreign landholders are likely to be less concerned about local economies and diseconomies of scale than native or naturalized citizens.

#### Loss of Potential Taxes

Taxes are legally distinguished between persons (in personam) and things (in rem). Real estate taxes are classified as in rem taxes and give no tax breaks to the foreign investor. In personam taxes, on the other hand, are a different matter. An alien owner may allocate overhead costs to the U.S. while shifting taxable profit to his home country. Certain payroll taxes and consumption and death taxes may be legally disregarded by the landholding foreigner. Because the foreigner is less interested in marginal land improvements, which are taxable, land used less intensively by the absentee owner yields less taxes. Also, gains on the sale of United States land assets are not taxed if the foreign investor resides in his home country for more than half a year.

### Higher Land Prices

Foreign investment may drive land prices beyond the level of American bidding. Many foreigners are willing to pay premium prices for high quality farmland. In addition, tax advantages available to aliens may prompt more foreigners to invest in American farmland. Young U.S. farmers are finding it increasingly difficult to acquire land of their own. However, higher land prices are not always a disadvantage. It should be pointed out that as land prices are bid up by foreigners, there will be an American seller who benefits.

#### IV. Existing U.S. Domestic Regulation

##### State Legislation

Land laws traditionally fall within the legal domain of the states. Presently, there are twenty-one states which have no regulations on alien ownership of farmland. The remaining twenty-nine states have some type of foreign ownership restrictions.

The most common form of state restriction is general prohibition on alien ownership of land. Eight states forbid aliens to own land. Five other states have major restrictions on foreign ownership of U.S. farmland. These restrictions are of two types. The states may limit either the acreage which a nonresident alien can own or the maximum time period during which an alien may hold land. A number of states have restriction of minor importance which have a smaller impact on farmland investment. These secondary statutes include regulations on inheritance rights, state property, and alien corporate investment.

##### Federal Legislation

Few federal regulations deal with alien investment primarily because the law of property is state law. The most important federal law restricting foreign acquisitions of farmland is the Trading With the Enemy Act.<sup>1</sup> This statute permits the U.S. to assume control and management of the property of alien enemies in time of war or declared emergency.<sup>2</sup> This law also places all assets of restricted foreign countries under the control of the Department of the Treasury.<sup>3</sup> Other federal laws are concerned with control of the public domain. These statutes deal with grazing permits as well as mineral leases and licenses.

## V. Constitutional and Treaty Limitations

The need for regulation of foreign investment is still being researched. The initial challenge, however, is not determining the need for alien regulation but defining the constitutionality of allowing regulation of foreign investors.

### Equal Protection and Due Process

The most limiting constitutional challenges to foreign regulation are contained in the equal protection and due process clauses of the Fourteenth Amendment.<sup>a/</sup>

These clauses state that "No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."<sup>4</sup> The important aspect of the equal protection and due process clauses lies in the definition of the term "person."

The question of whether the Fourteenth Amendment will allow a foreign investor to purchase an interest in agricultural land has been interpreted by the Supreme Court in various court cases.<sup>5 b/</sup>

<sup>a/</sup> Although the Fourteenth Amendment applies only to state governments, the equal protection and due process clauses will also apply to constitutional challenges of federal laws and regulations.

<sup>b/</sup> In Graham v. Richardson, the Supreme Court declared that classifications based on alienage are "suspect" and stated that "a 'person' (in the context of the Fourteenth Amendment) encompasses lawfully admitted resident aliens, as well as citizens of the United States, and entitles both citizens and aliens to equal protection of the laws of the state in which they reside." In Terrace v. Thompson, the Supreme Court noted that: "Each state in the absence of any treaty provision to the contrary, has power to deny to aliens the right to hold land within its borders... . State legislation...cannot be said to be capricious or to...transgress the due process clause." However, a federal district court held in Shanes v. Nebraska that "...the Supreme Court has never indicated



It appears that regulation of foreign investment in realty falls within the bounds of the Fourteenth Amendment unless the restriction is based on the investor's race or nationality.

### Foreign Relations

Another major constitutional limitation is that which gives total power of foreign relations to the federal government.<sup>c/</sup>

Article I of the United States Constitution declares that:

"Congress shall have the power...to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."<sup>6</sup>

State governments cannot infringe on this exclusive power of the federal government to conduct its own foreign policy. In contrast, state laws have traditionally, defined the property rights of citizens and aliens within their boundaries. How far state regulation of ownership can extend before intruding into federal foreign relations authority is an issue that must be resolved.

In Clark v. Allen the Supreme Court upheld a California law based on reciprocity rules.<sup>7</sup> The statute permitted nonresident aliens to inherit property only if a reciprocal right of inheritance for U.S. citizens existed in the alien's home country.

Prompted by the Supreme Court's decision, a number of states adopted more extensive reciprocity laws.<sup>8</sup> A potential heir had to obtain proof from his foreign government that an American heir

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in unequivocal terms whether a State is required to give due process to nonresident aliens."

<sup>c/</sup> This constitutional limitation applies strictly to state regulations and restrictions.

would have reciprocal rights and would receive the benefit of the estate without confiscation. In Zscherning v. Miller, however, the Supreme Court ended this judicial inquiry into the economic and political systems of other nations.<sup>9</sup> Yet the Court refused to reconsider Clark.

Lower court cases have not clarified the confusion created by the simultaneous existence of the Clark and Zscherning decisions. The cases seem to say that a state may base its alien inheritance laws on reciprocity as long as the enforcement of the statutes does not result in offensive contacts with foreign countries. The determination of "offensive contacts" is left to later court decisions.

## VI. Conclusion

In conclusion, the issue of foreign investment in American farmland is multi-dimensional. There are no clear cut jurisdictions. Foreign investment is not just an economic issue; nor is it just a political issue.

As more information is gathered, impacts of alien ownership on the American farmer can be weighed more accurately. It is imperative, however, that economists and legal authorities work together in defining the rules of the issue. Only after careful consideration by the two disciplines can effective policy decisions be made.

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