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# STRANGERS IN PARADISE: AN OVERVIEW OF MARYLAND STATE LAW DEALING WITH NONCITIZENS

William Karl Wilburn†

## I. INTRODUCTION

The growing number of foreigners living, working, studying in, or otherwise interacting with the State of Maryland is internationalizing Maryland's everyday life.<sup>1</sup> This trend will undoubtedly affect members of the Maryland bar, who will confront legal issues involving the civil, property, commercial, and political rights of aliens. This article examines current Maryland law<sup>2</sup> regarding aliens and, where appropriate, recommends changes.

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1. See generally MARYLAND INT'L DIV., DEP'T OF ECONOMIC AND EMPLOYMENT DEV., MARYLAND INTERNATIONAL BUSINESS REPORT 1992 [hereinafter MARYLAND BUSINESS REPORT 1992]. Maryland's internationalization is confirmed by figures from the State of Maryland. Direct foreign investment in Maryland in 1991 was estimated at \$300 million, thereby raising cumulative foreign investment in Maryland to \$5.5 billion (up from \$2.1 billion in 1981). *Id.* at 2. There are 800 foreign affiliate companies (those with 10% or more foreign ownership) in Maryland which directly employ 78,400 workers. *Id.* Foreign investment and exports supported nearly 140,000 jobs in Maryland in 1991. *Id.* at 1, 3. In 1991, more than 410,000 international tourists spent \$61 million in the state. *Id.* at 1, 5. The United States Department of Justice's Immigration and Naturalization Service (INS) reported that during the 1990 fiscal year, 142,409 non-immigrant aliens were admitted to the United States claiming Maryland as their initial destination. See UNITED STATES DEP'T OF JUSTICE, STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE, Table 611 (1990). At the same time, 12,743 immigrants resided in Maryland. See *id.*, Detail Run 423.
2. This article does not focus on federal law; for example, this article will not focus directly on immigration matters, which involve the admission, classification, control, and deportation of aliens and citizen application procedures. These are exclusively a federal function. See U.S. CONST. art. I, § 8, cl. 4 (Congressional Power to Establish Uniform Rules of Naturalization). The U.S. Supreme Court has "long recognized the preeminent role of the Federal Government with respect to the regulation of aliens within our borders." *Toll v. Moreno*, 458 U.S. 1, 10 (1982).

The first European immigrants attracted to Maryland were the English, who, in 1634, established a settlement on St. Clements Island in St. Mary's County.<sup>3</sup> Ever since that time, foreigners have been attracted to the state for innumerable reasons. Factors that make Maryland attractive include the state's proximity to the international, diplomatic, and business communities of Washington, D.C.;<sup>4</sup> the international trade and maritime communities of Baltimore;<sup>5</sup> the higher education and research institutions situated within the state;<sup>6</sup> and the State of Maryland's efforts at promoting itself to foreign business and investment.<sup>7</sup> Maryland's international orientation and alien population have become integral to the state's social and economic fabric.

## II. WHO IS AN ALIEN?

### A. "Alien" — A Federally Defined Term

The popular definition of "alien" is "a resident born in or belonging to another country who has not acquired citizenship by naturalization."<sup>8</sup> This popular meaning has been adopted by Con-

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3. MATTHEW P. ANDREWS, HISTORY OF MARYLAND: PROVINCE AND STATE 24-27 (1965).
  4. Nearby Washington, D.C., is home to over 100 foreign embassies and international organizations. See CONGRESSIONAL QUARTERLY, INC., CONGRESSIONAL QUARTERLY'S WASHINGTON INFORMATION DIRECTORY (1989-90).
  5. In terms of dollar values, the Port of Baltimore is one of the largest exporting ports on the mid-Atlantic Coast. Foreign commerce through the Port in 1991 was 23.9 million short tons, valued at \$16.6 billion. MARYLAND BUSINESS REPORT, *supra* note 1, at 2.
  6. For example, the University of Maryland has exchange agreements with 144 foreign universities in 43 countries. In 1991, the university's College Park campus became one of sixteen "national resource centers" for international business funded by the U.S. Department of Education. MARYLAND BUSINESS REPORT, *supra* note 1, at 7. The Johns Hopkins University also has a large number of foreign students enrolled in various academic programs, and has relations with a number of foreign universities and institutions. The Johns Hopkins School of Advanced International Studies in Washington, D.C., is a major international studies institution, with overseas programs in Bologna, Italy and Nanjing, People's Republic of China. *Id.*
  7. The Maryland International Division of the Department of Economic and Employment Development was created in July 1988 to consolidate the state's international activities. MARYLAND BUSINESS REPORT, *supra* note 1, at 6.
  8. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 53 (2d ed. 1987). The complete definition of "alien" is:
    1. a resident born in or belonging to another country who has not acquired citizenship by naturalization (distinguished from *citizen*).
    2. a foreigner.
    3. a person who has been estranged or excluded.
    4. a creature from outer space; extraterrestrial. - adj.
    5. residing under a

gress, which has defined an alien as "any person not a citizen or national of the United States."<sup>9</sup>

To determine whether a person is an alien, it is first necessary to ascertain whether the person is a United States citizen. The Fourteenth Amendment to the United States Constitution provides that citizens of the United States include "[a]ll persons born or naturalized in the United States."<sup>10</sup> The determinative factor in this definition is therefore premised in the notion of *jus soli* (the law of the soil), which looks to one's place of birth, rather than the concept of *jus sanguinis* (the law of the blood), which emphasizes the nationality of one's parents.<sup>11</sup>

Persons born outside the United States are thus presumed to be aliens.<sup>12</sup> Congress, however, has been empowered to expand the constitutionally derived definition of "citizen"<sup>13</sup> to include "naturalized citizens," who are children born to American citizens while outside of the United States.<sup>14</sup> Similarly, Congress has established procedures for "naturalization," which is the process by which a person of foreign nationality acquires U.S. citizenship.<sup>15</sup> A United

government or in a country other than that of one's birth without having or obtaining the status of citizenship there. 6. belonging or relating to aliens: *alien property*. 7. unlike one's own; strange; not belonging to one: *alien speech*. 8. adverse; hostile; opposed (usually fol. by *to* or *from*): *ideas alien to modern thinking*. 9. extraterrestrial . . . — Syn. 1. immigrant. 2. see *stranger*. 3. outcast. 7. [sic] exotic, foreign.

*Id.*

9. 8 U.S.C. § 1101(a)(3) (1988).
10. U.S. CONST. amend. XIV, § 1.
11. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).
12. *See Rogers v. Bellei*, 401 U.S. 815 (1971) (holding that Congress has power to impose a residency requirement as a condition subsequent on an alien born on foreign soil to American parents in order to maintain status as American citizen); *Corona-Palomera v. INS*, 661 F.2d 814 (9th Cir. 1981) (finding Mexican birth certificates that provided evidence of foreign birth to give rise to presumption that petitioners were aliens).
13. This power is derived from article I, § 8 of the United States Constitution, which provides that "[t]he Congress shall have Power . . . [t]o establish a uniform Rule of Naturalization." U.S. CONST. art. I, § 8; *see also Bellei*, 401 U.S. at 830 (discussing Justice Gray's assertion in *Wong Kim Ark* that the first sentence of the Fourteenth Amendment does not address the acquisition of citizenship by being born abroad of American citizens, but rather has "left that subject to be regulated, as it had always been, by Congress, in the exercise of the power conferred by the Constitution to establish a uniform rule of naturalization" (quoting *Wong Kim Ark*, 169 U.S. at 688)).
14. *Bellei*, 401 U.S. at 830.
15. Sections 1421-1458 of the Immigration and Nationality Act detail the naturalization process. 8 U.S.C. §§ 1421-1458 (1988). Naturalization is defined as "the conferring of nationality of a state upon a person after birth, by any means whatsoever." 8 U.S.C. § 1101(a)(23) (1988).

States "national" is a "person who, although not a citizen of the United States, owes permanent allegiance to the United States."<sup>16</sup> The limited status of U.S. "national" occurs most frequently in connection with possessions and territories of the United States.<sup>17</sup>

The definition of "alien" is thus essentially negative in character, for it includes all persons who are neither U.S. citizens nor U.S. "nationals."<sup>18</sup> Within the class of persons defined as "aliens," federal law has established three distinct subclasses. Ranked in reverse order of their approximation to citizenship, these subclasses are: (1) illegal or "undocumented" aliens; (2) non-immigrant aliens; and (3) "permanent resident" aliens. "Illegal aliens," often referred to as "undocumented aliens,"<sup>19</sup> are individuals who have unlawfully entered the United States.<sup>20</sup> Nonetheless, the Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to these aliens.<sup>21</sup>

The second category, "non-immigrant aliens,"<sup>22</sup> are non-U.S. citizens who lawfully enter the United States with permission to stay for a limited duration, after which they are required to leave.<sup>23</sup> To qualify for this status, an alien must establish that he has a foreign residence that he does not intend to abandon, and that he will voluntarily depart upon expiration of his visa.<sup>24</sup> Such aliens may be granted non-immigrant visas to conduct business in the United States for a foreign employer,<sup>25</sup> or to undertake an established course of study.<sup>26</sup> This group constitutes the vast number of foreign tourist, student, and business visitors to the United States.

The third category of aliens are those who are permanent residents of the United States. Immigrants who are accorded the privilege of permanent residency in the United States are required to obtain alien registration receipt cards, commonly referred to as "green

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16. *Id.* § 1101(a)(22).

17. 1 AUSTIN T. FRAGOMEN, JR., ET AL., IMMIGRATION LAW AND BUSINESS § 5.3(a) (1990).

18. 8 U.S.C. § 1101(a)(3) (1988).

19. See *In re Alien Children Educ. Litig.*, 501 F. Supp. 544, 560 (S.D. Tex. 1980).

20. *Fernandez v. Wilkinson*, 505 F. Supp. 787, 790 (D. Kan. 1980) (holding that Cuban aliens detained pending exclusion do not enjoy rights guaranteed to citizens and alien entrants), *aff'd*, 654 F.2d 1382 (10th Cir. 1981); *In re Alien Children*, 501 F. Supp. at 565 (holding that states may treat citizens and resident aliens differently than undocumented aliens as long as either no fundamental right is affected or a compelling state interest is furthered).

21. *Bolanos v. Kiley*, 509 F.2d 1023, 1025 (2d Cir. 1975); *In re Alien Children*, 501 F. Supp. at 569.

22. 8 U.S.C. § 1101(a)(15) (1988).

23. *Jain v. INS*, 612 F.2d 683, 686 (2d Cir. 1979), *cert. denied*, 446 U.S. 937 (1980).

24. *Id.*

25. 8 U.S.C. § 1101(a)(15)(M)(i) (1988).

26. *Id.* § 1101(a)(15)(F)(i).

cards."<sup>27</sup> These aliens enjoy many of the rights and share many of the burdens of United States citizenship.<sup>28</sup> Permanent residency is frequently the first step taken toward becoming a naturalized United States citizen.<sup>29</sup>

### B. Citizenship

The term "citizen," like the term "alien," is also divided into subcategories. It is well established that citizens of the United States have dual identities: they are citizens of both the United States and of the state in which they live.<sup>30</sup> The Fourteenth Amendment to the United States Constitution acknowledges this duality of citizenship by stating that "[a]ll 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."<sup>31</sup> The determination of federal citizenship, although not uncomplicated, is at least governed by a single standard, *i.e.*, federal law. Each state, however, may determine the terms and conditions of its own citizenship requirements, subject only to the bounds of the Fourteenth Amendment.<sup>32</sup> California<sup>33</sup> and Georgia<sup>34</sup> are among the few states having consti-

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27. See 8 U.S.C. § 1101(a)(20) (1988); see also *Sam Andrews' Sons v. Mitchell*, 457 F.2d 745, 747-48 (9th Cir. 1972). Prior to 1976, the alien registration receipt card was designated as Form I-151. In 1979, the government began to issue the computer-ready Form I-551. Although commonly referred to as green cards, alien registration cards are actually rose-pink. 1 CHARLES GORDON & STANLEY MAILMAN, IMMIGRATION LAW & PROCEDURE § 6.11[4] (rev. ch. 1991).
  28. 8 U.S.C. § 1101(a)(20) (1988); see also *Sam Andrews' Sons*, 457 F.2d at 748 (invalidating administrative regulation prohibiting reentry into the country on a green card if a labor dispute exists at the cardholder's place of employment as the distinction between those green card holders who commute into the country daily and those who reside within the United States was not rationally related to the statute).
  29. 8 U.S.C. § 1445(b) (1988).
  30. U.S. CONST. amend. XIV, § 1. "Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state." *Crosse v. Board of Supervisors of Elections*, 243 Md. 555, 558, 221 A.2d 431, 433 (1966) (citing *United States v. Cruikshank*, 92 U.S. 542, 549 (1875); *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 73-74 (1873)).
  31. U.S. CONST. amend. XIV, § 1.
  32. See *id.* But see *Dunn v. Blumstein*, 405 U.S. 330, 340 (1972) ("Durational residence laws . . . are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.'").
  33. CAL. GOV'T CODE § 241 (West 1992). California defines state citizenship as "(a) [a]ll persons born in the State and residing within it, except the children of transient aliens and of alien public ministers and consuls; (b) [a]ll persons

tutional or statutory provisions that actually define state citizenship. Maryland's constitution and code do not offer similar guidance. Instead, Maryland citizenship is a fluid concept; its requirements depend "not upon definition but the constitutional or statutory context in which the term is used."<sup>35</sup>

Maryland's first legislative efforts to address state citizenship occurred in 1692 when the General Assembly, the first such legislative body established under the colonial royal government, passed a naturalization act. This legislation authorized the Governor "to declare any alien foreigner either now settled in Maryland, or hereafter coming to settle there, a naturalized citizen."<sup>36</sup>

The legislature's next significant effort to define state citizenship occurred in July 1779, when the colony was in the midst of the Revolutionary War, with the passage of "An Act for Naturalization." Having renounced its ties to Great Britain, the colony saw a need to clarify its new citizenship requirements. The Act for Naturalization provided that in order to become a citizen of Maryland an alien must swear allegiance to the state.<sup>37</sup> The oath of affirmation required that the applicant renounce allegiance "to any king or prince, or any other state or government."<sup>38</sup>

A trio of mid-nineteenth century attachment cases shed indirect light on the state judiciary's early posture regarding state citizenship. In *Field v. Adreon*,<sup>39</sup> an unnaturalized Irish debtor who resided and did business in Baltimore absconded from the state,<sup>40</sup> whereupon attachment proceedings were brought against a garnishee who held his remaining property in Maryland.<sup>41</sup> The case proceeded to trial, at which the jurors were presented with the following jury instruction:

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born out of the State who are citizens of the United States and residing within the State." *Id.*

34. GA. CONST. art. I, § I, para. VII. The Georgia Constitution provides that "[a]ll citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship." *Id.*

35. *Crosse v. Board of Supervisors of Elections*, 243 Md. 555, 559, 221 A.2d 431, 434 (1966).

36. See BERNARD C. STEINER, *CITIZENSHIP AND SUFFRAGE IN MARYLAND* 11-12 (1895) (providing an exhaustive examination of the state's citizenship and naturalization laws from the colonial settlement era to 1895). According to Steiner, the Act probably expired with the governorship of Sir Lionel Copley. *Id.* at 12 n.1.

37. Act of July 22, 1779, ch. VI (1779 Md. Laws, Kilty, vol. 1).

38. *Id.*; see *Crosse*, 243 Md. at 561, 221 A.2d at 435 (citing STEINER, *supra* note 36).

39. 7 Md. 209 (1854).

40. *Id.* at 213.

41. *Id.* at 210.

If [the jury members] believe that Kennedy was born in Ireland, of Irish parents, and did not come to America until 1850, being then twenty-four or twenty-five years of age, then he was not a citizen of the State of Maryland within the meaning of the attachment laws of this state: there being no proof of his having made any declaration of his intention to become a citizen of the United States, or of his having been naturalized.<sup>42</sup>

Because the debtor was found not to have been a Maryland citizen as required under the attachment law, judgment was entered in favor of the garnishee.<sup>43</sup> The court of appeals reversed, rejecting such a rigid definition of state citizenship:

[T]he defendant in this case, it appears, was an unnaturalized Irishman, residing and doing business in Baltimore at the time he absconded, and the question for us to determine is, whether those circumstances are sufficient to constitute him a *citizen* in contemplation of our attachment laws, inasmuch as we have shown that he could not be proceeded against as a *non-resident* debtor?

It certainly never could have been the intention of our legislature to have made such an invidious distinction in favor of *foreign citizens* residing in our State, over our own resident citizens, as to exempt the former from being proceeded against as absconding debtors, while the latter were to be held subject to all the penalties of the attachment laws against debtors absconding to evade their creditors.

We are of the opinion, that as the debtor was residing and doing business in Baltimore, he was, in contemplation of our attachment laws, *a citizen of this State*, and as such, having actually run away to avoid his creditors, was liable to be proceeded against as an absconding debtor.

We do not wish to be understood as deciding, that the debtor in this case was a citizen for every purpose and in every sense. *A party may not be a citizen for political purposes, and yet be a citizen for commercial or business purposes.*<sup>44</sup>

Eight years later, in *Risewick v. Davis*,<sup>45</sup> the court of appeals reversed a Harford County trial court's narrow view of citizenship, favoring the broader approach it had utilized in *Field*.<sup>46</sup>

The word "citizen" has various meanings, viz: "A native of a city, an inhabitant who enjoys the freedom and privi-

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42. *Id.*

43. *Id.* at 210-11.

44. *Id.* at 213-14 (emphasis supplied in part and added in part).

45. 19 Md. 82 (1862).

46. *Id.* at 97.

leges of the city in which he resides, an inhabitant, a dweller in any city, town or place; a person, native or naturalized, who enjoys the privilege of exercising the elective franchise, or holding real estate."<sup>47</sup>

Six years after *Risewick*, the court of appeals, in *Dorsey v. Kyle*,<sup>48</sup> affirmed the applicability of attachment proceedings brought against a Maryland man who had served in the Confederate Army during the Civil War.<sup>49</sup> The court concluded that the debtor, although physically absent, was legally domiciled in Maryland during the war:

"Every person who doth not reside in this State, and every person who absconds, may be made a defendant in an attachment," is the provision in our law in regard to defendants in attachments, and the term citizen, used in the formula of the affidavit prescribed by the 4th section of the Article of the Code referred to, is to be taken as synonymous with inhabitant or permanent resident. It is not, therefore, every person who can claim to be a citizen of, or to have domicil in the State, that can be relieved from the process of attachment. In contemplation of the attachment law, the domicil may be in this State, while the actual residence is in another.<sup>50</sup>

Interestingly, the defendant sought to exempt himself from the operation of Maryland's laws because he was an enemy at the time. The court of appeals rejected this argument:

As a general rule, an alien enemy is not allowed to maintain suit in the courts of the country with which he is, at the time, in hostility. This, however, is a personal disability, of a temporary duration . . . . But no such reason or policy forbids judicial proceedings against an alien enemy, in favor of a friendly citizen . . . . It is not a matter of privilege, but a disability that suspends the right to maintain an action in the courts of the country to which the party is an enemy. And if a party, though an alien enemy, be suable at all, it is difficult to suggest a good reason why the same proceedings cannot be had by his creditors against his property remaining in the jurisdiction of the State, that can be taken against the property of any other non-resident debtor whatever.<sup>51</sup>

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47. *Id.* at 93 (citation omitted).

48. 30 Md. 512 (1869).

49. *Id.* at 518.

50. *Id.* (citations omitted).

51. *Id.* at 519-20.

Nearly a century passed before the Court of Appeals of Maryland again had occasion to visit the issue of state citizenship. *Crosse v. Board of Supervisors of Election*,<sup>52</sup> the leading modern case construing the concept of Maryland citizenship, concerned a dispute over the qualification for the office of county sheriff. Whereas the nineteenth century cases involved commercial activity, *Crosse* dealt with political activity.

Crosse, a West Indian by birth, immigrated to the United States in 1957 and resided in Maryland.<sup>53</sup> On April 29, 1966, he became a naturalized citizen of the United States and a registered Maryland voter.<sup>54</sup> On May 26, 1966, Crosse filed his candidacy to run for Sheriff of Baltimore City.<sup>55</sup> Citing article IV, section 44 of the Maryland Constitution, which reads "[t]here shall be elected in each county and in Baltimore City . . . one person, resident in said county, or City, above the age of twenty-five years *and at least five years preceding his election, a citizen of the State*, to the office of Sheriff,"<sup>56</sup> the Board of Supervisors of Elections determined that Crosse was not qualified to be a candidate. The Board reasoned that Crosse was unqualified as he had not been a U.S. citizen for the full five years preceding the upcoming election.<sup>57</sup> Crosse filed a petition for writ of mandamus against the Board to certify his candidacy. Holding that the Board of Supervisors was correct, the Superior Court of Baltimore City refused to issue the writ. The court of appeals, however, reversed, ordering the writ to be issued.<sup>58</sup>

In construing the word "citizen," the court of appeals noted the "diversity of the term's usage,"<sup>59</sup> and observed that "[t]here is no express requirement in the Maryland Constitution that sheriffs be United States citizens."<sup>60</sup> The court then identified two qualifications that must be met to confer Maryland citizenship. The more important of the two requirements is that of domicile.<sup>61</sup> "[S]tate citizenship, as used in the constitutional qualifications for this office, was meant to be synonymous with domicile . . . ."<sup>62</sup> A second requirement is that of allegiance.<sup>63</sup> "By the [Maryland] naturalization act of 1779, the Legislature provided that, to become a citizen of Maryland, an alien

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52. 243 Md. 555, 221 A.2d 431 (1966).

53. *Id.* at 558, 221 A.2d at 433.

54. *Id.*

55. *Id.*

56. *Id.* at 557, 221 A.2d at 433 (emphasis added).

57. *Id.*

58. *Id.*

59. *Id.* at 559, 221 A.2d at 434.

60. *Id.* at 560, 221 A.2d at 435.

61. *Id.* at 561, 221 A.2d at 435.

62. *Id.*

63. *Id.*

must swear allegiance to the State [and thereby] renounce[] allegiance 'to any king or prince, or any other State or Government.'"<sup>64</sup>

In conclusion, "alien" is a term of federal status, derived by default if a person does not qualify as a United States citizen.<sup>65</sup> Thus, because both are federally determined terms, "alien" and "U.S. citizen" have comparatively clear qualification requirements. State citizenship — or for purposes of this article, "Maryland citizenship" — is more elusive, because it depends on the "constitutional or statutory context in which the term is used,"<sup>66</sup> and has neither constitutional nor statutory definition under Maryland's code or constitution.

### III. FEDERAL CONSTITUTIONAL AND STATUTORY CONSIDERATIONS

A discussion of the full range of United States constitutional limitations on state regulation of aliens would exceed the scope of this Article and would distort its focus on Maryland law. Nevertheless, the Maryland practitioner should be aware of certain basic federal constitutional and statutory considerations that relate to all states and to the aliens within their jurisdiction.

The Fifth and Fourteenth Amendments to the United States Constitution require that no "person" shall be deprived of life, liberty or property without due process of law.<sup>67</sup> Therefore, both citizens and aliens alike are protected under these guarantees.<sup>68</sup> The United States Supreme Court has guaranteed to aliens, like citizens, the sanctity of their jobs, homes, and property, as well as legal procedural fairness.<sup>69</sup> Bolstering these assurances are provisions of the federal Civil Rights Act that bar discrimination against aliens' constitutional rights, privileges and immunities, and assure them

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64. *Id.*

65. *See supra* note 9 and accompanying text.

66. *Crosse*, 243 Md. at 558-59, 221 A.2d at 434.

67. U.S. CONST. amend. V, § 2; *id.* amend. XIV, § 2.

68. *See, e.g.*, *Graham v. Richardson*, 403 U.S. 365 (1971) (finding provisions of state welfare laws conditioning benefits on citizenship and imposing durational residency requirement on aliens to deny equal protection of the laws and violate the Fourteenth Amendment); *Truax v. Raich*, 239 U.S. 33 (1915) (finding law requiring employers to hire not less than 80% native-born citizens to deny equal protection of the laws and violate the Fourteenth Amendment); *Wong Wing v. United States*, 163 U.S. 228 (1896) (finding law providing that a Chinese person adjudged to be in the United States unlawfully shall be imprisoned to hard labor to be in violation of the Fifth Amendment); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (finding city ordinance which, as applied, restricted Chinese laundries but not non-Chinese laundries to be a denial of equal protection and a violation of the Fourteenth Amendment).

69. *See* 1 GORDON & MAILMAN, *supra* note 27, § 6.02.

security in their persons and property.<sup>70</sup> This federal legal fabric protects aliens, including illegal immigrants, from arbitrary taking of their property and entitles them to the same procedural safeguards as citizens in criminal prosecutions, civil litigation, and administrative proceedings.<sup>71</sup>

Unlike non-immigrant aliens, immigrant aliens are free to pursue any livelihood they wish to choose.<sup>72</sup> Although this right is guaranteed under the Fourteenth Amendment,<sup>73</sup> until the 1970s, states and municipalities routinely discriminated against aliens, denying them state benefits and employment opportunities.<sup>74</sup> These restrictions were justified on the grounds of a state's proprietary interest in public property or natural resources, or on its duty and power to protect the public welfare.<sup>75</sup> In 1971, the United States Supreme Court declared that such classifications were "inherently suspect."<sup>76</sup> Two years later, the Court invalidated state laws barring resident aliens from civil service jobs<sup>77</sup> and from the legal profession.<sup>78</sup> These cases required proof of a substantial governmental interest before state exclusion of aliens would be constitutionally permissible.<sup>79</sup> The Court later found a substantial governmental interest, however, when it upheld state discrimination against aliens in the hiring of police officers,<sup>80</sup> public school teachers,<sup>81</sup> and deputy probation officers.<sup>82</sup>

Some restrictions on the ownership of property by aliens were declared unconstitutional in 1948.<sup>83</sup> The Supreme Court has also

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70. 42 U.S.C. §§ 1981, 1983 (1988); 18 U.S.C. § 242 (1988).

71. *See supra* note 67 and accompanying text; *see also* *Chew v. Colding*, 344 U.S. 590 (1953) (finding alien entitled to procedural due process under Fifth Amendment and therefore entitled to hearing in opposition to exclusion order of Attorney General); *Sung v. McGrath*, 339 U.S. 33 (holding that under Fifth Amendment, administrative hearing for deportation must meet prevailing standards of impartiality), *modified*, 339 U.S. 908 (1950); *Ho v. White*, 259 U.S. 276 (1922) (holding that because deportation of resident claiming to be a citizen deprives him of liberty and may result in loss of property and life, the Fifth Amendment is violated unless person is given a judicial hearing on the citizenship claim).

72. *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 418-20 (1948); *Truax v. Raich*, 239 U.S. 33, 41 (1915).

73. *See supra* note 72.

74. *See* 1 GORDON & MAILMAN, *supra* note 27, § 6.05[1]-[2].

75. *Id.*

76. *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (finding denial of welfare benefits to resident aliens to violate Equal Protection Clause of Fourteenth Amendment).

77. *Sugarman v. Dougall*, 413 U.S. 634 (1973).

78. *In re Griffiths*, 413 U.S. 717 (1973).

79. *Id.* at 722; *Sugarman*, 413 U.S. at 641-42.

80. *Foley v. Connelie*, 435 U.S. 291 (1978) (6-3 decision).

81. *Ambach v. Norwick*, 441 U.S. 68 (1979) (5-4 decision).

82. *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982) (5-4 decision).

83. *Oyama v. California*, 332 U.S. 633 (1948).

recognized that under the Supremacy Clause, treaty rights conferring broad property rights to aliens will control over conflicting state restrictions.<sup>84</sup> Nevertheless, numerous federal statutes also prohibit alien ownership of property interests such as mineral and energy assets.<sup>85</sup>

#### IV. MARYLAND CIVIL, POLITICAL, AND PROPERTY LAW AS APPLIED TO ALIENS

##### A. *Political Rights*

Maryland's constitution contains numerous provisions dealing with general civil and political activity that directly impact on the rights of aliens.<sup>86</sup> The state's constitution leads to curious, and at times inconsistent, results when applied to aliens' rights to become political candidates or jurors.

Under article I, section 1 of the Constitution of Maryland, an alien may not vote in any state election.<sup>87</sup> Specifically, the constitution provides:

Every *citizen of the United States*, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State.<sup>88</sup>

Thus, United States citizenship is a clear condition to the right to vote in Maryland state elections.<sup>89</sup> This condition is constitutional under federal case law because the United States Supreme Court has acknowledged the power of a state to deny the right to vote based on alienage.<sup>90</sup>

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84. *Kolovrat v. Oregon*, 366 U.S. 187, 198 (1961); *Hauenstein v. Lynham*, 100 U.S. 483, 488-89 (1879).

85. See 48 U.S.C. §§ 1501-1502 (1992); see also 1 GORDON & MAILMAN, *supra* note 27, § 6.06.

86. See MD. CONST. art. I, § 1 (elections and voting); MD. CONST. art. II, § 5 (governor and lieutenant governor); MD. CONST. art. III, § 9 (senators and delegates); MD. CONST. art. IV, § 44 (sheriffs); MD. CONST. art. V, § 4 (attorney general); MD. CONST. art. V, § 10 (state's attorney).

87. MD. CONST. art. I, § 1.

88. *Id.* (emphasis added).

89. In addition to the provision in the Maryland Constitution, the Maryland Code provides in part that: "The qualifications of voters are the following; each one of which is applicable to every voter: (1) Citizen of the United States . . . ." MD. ANN. CODE art. 33, §§ 3-4(b) (1990).

90. *Foley v. Connelie*, 435 U.S. 291, 296 (1978) ("a State may deny aliens the right to vote") (citing *Sugarman v. Dougall*, 413 U.S. 634, 647-49 (1973)).

Under article I, section 12 of the Constitution of Maryland, only registered voters in the state may run for or hold elective offices created by the Maryland Constitution.<sup>91</sup> The constitution provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provision of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.<sup>92</sup>

This provision operates to bar aliens from most — but not all — of the State's high political offices. If one must be a "citizen of the United States" in order to register to vote in Maryland<sup>93</sup> and a "registered voter in this State" to run for or hold "an elective office created by or pursuant to the provisions of this Constitution,"<sup>94</sup> then aliens are disqualified from running for such offices as governor and lieutenant governor,<sup>95</sup> attorney general,<sup>96</sup> comptroller,<sup>97</sup> state's attorney,<sup>98</sup>

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91. MD. CONST. art. I, § 12.

92. *Id.* The requirement imposed by article I, section 12 that state office holders be registered voters was upheld by the Court of Appeals of Maryland against an equal protection challenge based on the Fourteenth Amendment of the United States Constitution. *Broadwater v. State*, 306 Md. 597, 510 A.2d 583 (1986). The court did not apply a strict scrutiny analysis to the registered voter requirement, however, because the challenge mounted by the plaintiff in the case did not implicate "classification . . . [that] pertain to race, alienage, national origin, or 'personal rights protected by the Constitution.'" *Id.* at 604, 510 A.2d at 586. In the absence of strict scrutiny, the court found a rational basis for denying citizens who are not registered voters the right to hold political office. *Id.* at 608, 510 A.2d at 588. The court also relied on the relative ease with which today a citizen of Maryland can register to vote, assuming he or she is qualified to register. *Id.* at 605, 510 A.2d at 586-87. Of course, both the court's observation that the article I, section 12 registered voter requirement does not involve a classification pertaining to alienage, and the court's reliance on the ease with which an interested citizen may register to vote, are beside the point for an alien resident who is not allowed to vote solely because he or she is an alien.

93. MD. CONST. art. I, § 1.

94. *Id.* art. I, § 12.

95. *See id.* art. II, §§ 1, 1A, 2, 5 (creating the elective offices of governor and lieutenant governor and providing that eligibility for these offices requires being a registered voter for at least five years immediately preceding election).

96. *See id.* art. V, §§ 1, 4 (creating the elective office of attorney general and providing that eligibility for the office includes being a qualified voter in the state).

97. *See id.* art. VI, § 1 (creating, *inter alia*, the elective office of comptroller).

98. *See id.* art. V, §§ 7, 10 (creating the elective office of state's attorney).

senator or delegate,<sup>99</sup> judge,<sup>100</sup> sheriff,<sup>101</sup> and county commissioner.<sup>102</sup>

Aliens are free, however, to hold two *appointive* constitutional offices: treasurer<sup>103</sup> and secretary of state.<sup>104</sup> Maryland's inconsistent

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99. *See id.* art. III, §§ 6, 7 (providing that members of the general assembly shall be elected and establishing qualifications for the offices of state senator and delegate).
100. *See id.* art. IV, §§ 2, 3, 5, 5A. Maryland appellate court judges are initially appointed to office by the governor, with the advice and consent of the state senate. *Id.* art. IV, § 5A. Thereafter, appellate court judges are subject to a retention election, by which voters decide whether a judge should continue in office. *Id.* The retention elections are not contested in the sense that an opponent directly challenges a sitting judge for his office; rather, voters vote yes or no on whether the sitting judge should continue in office. *Id.* The retention election occurs at the next general election that is at least one year after an appellate judge's initial appointment to office and every ten years thereafter. *Id.* Whether this procedure makes appellate court judges elective or appointive officials would appear to be moot insofar as the article I, section 12 registered voter requirement, because all Maryland judges must be "qualified voters." *Id.* art. IV, § 2. Similarly, Maryland district court judges, who are appointed by the governor with the advice and consent of the senate, and who are not subject to an election of any type, are also required to be qualified voters. *Id.* art. IV, §§ 2, 41D.
101. *See id.* art. IV, § 44 (creating the elective office of sheriff); *cf.* 7 Op. Att'y Gen. 515, 516 (1922) (advising that governor lacked authority to appoint an alien as justice of the peace, based upon the "general principle that an alien cannot hold a public office"). Interestingly, the effect of the registered voter requirement did not impact the result in *Crosse v. Board of Supervisors of Elections*, 243 Md. 555, 221 A.2d 431 (1966). In that case, by the time *Crosse* filed for the office of sheriff, he was both a U.S. citizen and a registered voter in Maryland. *Crosse*, 243 Md. at 557-58, 221 A.2d at 433. The qualification at issue in *Crosse* was that the candidate had not been a U.S. citizen for a full five years prior to the election and thus did not satisfy the citizenship requirement of MD. CONST. art. IV, § 44. Nothing in MD. CONST. art. I, § 12 indicates that a candidate for public office must have been a U.S. citizen for any particular period of time prior to election, only that a person must be "a registered voter [and thus a U.S. citizen] in this State *on the date of the person's election.*" MD. CONST. art. I, § 12 (emphasis added). Thus, *Crosse* is still good law, at least as to its holding that state citizenship does not necessarily equate to U.S. citizenship for all purposes.
102. *See MD. CONST.* art. VII, § 1 (creating the elective office of county commissioner). Maryland charter counties are not governed by county commissioners, but instead are required to have an elected county council. *Id.* art. XI-A, § 3. Presumably this makes the office of a county council member one that is created pursuant to the state constitution, and therefore an office to which the article I, section 12 registered voter requirement applies. *See id.* art. I, § 12.
103. *See id.* art. VI, § 1 (creating the office of treasurer, appointed by joint ballot of the two houses of the general assembly at each regular session corresponding with the beginning of a term of office for the governor).
104. *See id.* art. II, § 22 (creating the office of secretary of state, appointed by the governor with the advice and consent of the senate).

eligibility requirements for political office are without any apparent rational basis. California, by contrast, deals with the matter clearly and concisely. The California code states that “[a] person is incapable of holding a civil office if at the time of his election or appointment he is not 18 years of age and a citizen of the state.”<sup>105</sup> Maryland’s growing alien population will inevitably lead to a greater number of aliens seeking elective office in Maryland. To avoid confusion and to promote consistency, the present requirements for political office in Maryland should be made clearer and more uniform through constitutional and legislative reform.

### B. Civil Rights

At early common law, aliens were permitted to hold personal property, but not real property.<sup>106</sup> This restriction was based on a perception that the holding of real property by aliens would somehow threaten the feudal sovereign.<sup>107</sup> In 1826, the General Assembly passed the state’s first statute addressing property rights of aliens.<sup>108</sup> The

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105. CAL. GOV’T CODE § 1020 (Deering 1992).

106. See GORDON & MAILMAN, *supra* note 27, § 6.06.

107. *Id.*

108. Act of Feb. 11, 1826, ch. 66, 1825 Md. Laws 49 provided:

Sec. 1. *Be it enacted by the General Assembly of Maryland*, That from and after the passage of this act, aliens actual residents of this state, shall be, and are hereby made able and capable in law to take, have, hold, use and enjoy lands, tenements and hereditaments within this state, which have heretofore been, or may hereafter be purchased by such aliens, or to which they would, if citizens be entitled by descent, and to sell and dispose of the same in like manner, as if they were natural born citizens of the United States: *Provided*, That if any male alien shall acquire any title to or interest in any real estate in virtue of this act, such alien shall within one year after the acquisition of said real estate, make the declaration prescribed by the first condition of the first section of the act of congress, entitled ‘An Act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject, and shall also within twelve months after his being capable of becoming a citizen, naturalize himself agreeably to the laws of the United States.

2. *And be it enacted*, That in case any male alien shall become entitled to any real estate within this state, and shall die within the term of one year herein before prescribed, without making the declaration aforesaid, or having made the said declaration, shall die within the term prescribed for his becoming a citizen without naturalization, and without having made any disposition by deed or will of said real estate, then the said real estate shall descend to, and vest in such person or persons as would be his or her heir or heirs, or capable in law to inherit the same, if such alien had been a citizen of the United States at the time of his death: *Provided*, That such person or persons

statute was repealed and reenacted in 1874.<sup>109</sup> A century later, it was revised to its current language, which reads: "Any alien who is not an enemy, may own, sell, devise, dispose of, or otherwise deal with property in the same manner as if he had been a citizen of the State by birth."<sup>110</sup>

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being male alien, shall proceed to comply with the provision of the first and third sections of this act, and become naturalized citizens within the time prescribed in said sections as the case may require.

3. *And be it enacted*, That in case any alien acquiring any title to, or interest in any real estate as aforesaid, shall at the time of such acquisition be a male infant, or *non compos mentis*, then the term herein before limited for making the declaration aforesaid, shall be reckoned from the time such alien shall arrive at full age, or become of sane mind, (as the case may be) and not from the time of acquiring title to said real estate.

4. *And be it enacted*, That if any alien or aliens shall, after having acquired any right, title or interest of, in or to any lands tenements or hereditaments as provided in the first section of this law, shall sell, convey or dispose of the same before he, she or they shall have become naturalized as aforesaid, and shall after such sale, conveyance and disposition, refuse or neglect to become naturalized as aforesaid, such sale, conveyance or disposition, shall be as good and valid in law as if he, she, or they had become naturalized agreeably to the provisions of said first section, and of the laws of the land.

5. *And be it enacted*, That the heirs of any alien holding real property, shall have, hold and enjoy the same, under the provisions of this act, in the same manner, and on the same conditions, that natural born citizens are now entitled to hold and enjoy real estate within this state: *Provided*, That such heirs, being male shall proceed to comply with the provisions of this act.

6. *And be it enacted*, That nothing in this act contained shall be so construed as to divest or impair any right of property acquired under the existing laws at any time before the passage of this act, and shall in no wise be construed so as to enable any alien or aliens by conforming to the provisions of this act, to hold any property as trustee or trustees for any alien or foreign corporation.

109. Act of Apr. 11, 1874, ch. 354, 1874 Md. Laws 519 provided:

AN ACT to repeal article four, of the Code of Public General Laws, entitled "Aliens," and to re-enact the same so as to read as follows: SECTION 1. *Be it enacted by the General Assembly of Maryland*, That article four, of the Code of Public General Laws, entitled "Aliens," and each and all the sections thereof, be and the same are hereby repealed, and the following enacted in lieu thereof:

SECTION 2. *And be it enacted*, That aliens, not enemies, may take and hold lands, tenements and hereditaments acquired by purchase or to which they would, if citizens, be entitled by descent: and may sell, devise or dispose of the same, or transmit the same to their heirs as fully and effectually, and in the same manner, as if by birth they were citizens of this State.

*See also* United States Fidelity & Guar. Co. v. Dempster, 150 Md. 235, 240, 133 A. 723, 725 (1926) (noting that in 1807 an alien could not inherit real estate in Maryland).

110. Act of Feb. 18, 1974, ch. 12, § 2, 1974 Md. Laws 455 (codified at MD. CODE ANN., REAL PROP. § 14-101 (1988)).

An examination of the statute reveals some glaring shortcomings and inconsistencies. First, the statute provides that an alien may enjoy certain rights as if he had "been a citizen of the State by birth."<sup>111</sup> Yet, as noted in *Crosse v. Board of Supervisors of Elections*, Maryland citizenship is not contingent upon birth within the state.<sup>112</sup> Residence and allegiance, not place of birth, are the basic requirements of citizenship.<sup>113</sup> The statute, therefore, contains superfluous and confusing language inconsistent with present state citizenship requirements.

Second, the Maryland statute's reference to "a citizen of the State by birth" strongly suggests that the only aliens to benefit from the statute are natural persons, not foreign corporations or other artificially created persons.<sup>114</sup> Given the level of international investment in Maryland, questions as to the statute's coverage of foreign corporations might prove to be problematic.

Finally, the statute confers the right to hold property only to an alien who is not an enemy.<sup>115</sup> This restriction is permissible.<sup>116</sup> The federal Trading with the Enemy Act<sup>117</sup> defines enemy aliens as persons or corporations who are citizens or who are incorporated under the laws of a country with which the United States is formally at war.<sup>118</sup> The Attorney General of Maryland initially adopted this formalistic and restrictive definition of an enemy alien.<sup>119</sup> Yet in light of state-sponsored terrorism and undeclared wars such as Operation Desert Storm in the Persian Gulf, Maryland's continued use of such an archaic test, which leaves lingering questions as to whether or not foreign corporations are protected, may be problematic in its application.

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111. MD. CODE ANN., REAL PROP. § 14-101 (1988).

112. See *Crosse v. Board of Supervisors of Elections*, 243 Md. 555, 558, 221 A.2d 431, 433 (1966); see also *supra* notes 52-64 and accompanying text.

113. *Crosse*, 243 Md. at 561, 221 A.2d at 435.

114. The definition of "person" in the state code is also of no help here: "The word 'person' shall include corporation, unless such a construction would be unreasonable." MD. ANN. CODE art. 1, § 15 (1990).

115. MD. CODE ANN., REAL PROP. § 14-101 (1988).

116. See *GORDON & MAILMAN*, *supra* note 27, §§ 6.06, 6.17; see also *Dorsey v. Kyle*, 30 Md. 512, 520 (1869).

117. 50 U.S.C. §§ 1-44 (1990).

118. *Id.* § 2.

119. 3 Op. Att'y Gen. 258 (1918). The Attorney General of Maryland was asked whether an alien who owned property in Maryland before the First World War, and who subsequently found himself to be "a subject of one of the Central Powers with which we are at war, and is therefore, an alien enemy" could convey good title as a seller. Relying on the Maryland statute, the Attorney General expressed the opinion that "an enemy alien cannot convey property, as only aliens, not enemies, are permitted by the [Maryland] statute to convey; therefore, I should not think that [the alien] could give a good title to the property." *Id.*

Subsequent opinions of the Attorney General of Maryland appear to recognize the rigidity of this "enemy" definition. In World War II, when asked if enemy aliens were eligible to sit for state examinations to qualify as licensed physicians<sup>120</sup> and dentists,<sup>121</sup> the Attorney General of Maryland replied in the affirmative. In light of these opinions, it seems incongruous that an alien who is an enemy may practice medicine or dentistry in Maryland, but may not own or convey real property. In any event, given the vagaries of what constitutes an "enemy" and given Maryland's increasing alien population, the state should re-examine this restriction as part of a general overhaul of the statute.

### C. *Inheritance Laws*

To complete the survey of Maryland laws that uniquely apply to aliens, a brief note on certain narrow provisions in the state's inheritance laws is in order. As a general rule, an alien's rights to descent and distribution in Maryland are unrestricted.<sup>122</sup> Maryland was not, however, always so lenient in allowing aliens to devise and inherit property. It was not until 1826 that aliens could inherit real estate in Maryland.<sup>123</sup> Presently, although aliens may take property by devise,<sup>124</sup> they are precluded from administering estates because letters of estate administration may not be granted to a person who is not a citizen of the United States unless the person seeking appointment is both the decedent's spouse and a permanent resident of the United States.<sup>125</sup>

Moreover, alien heirs or legatees who are not residents of the United States may not be accorded all distribution rights under some circumstances. For example, any share or legacy to a non-resident

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120. 27 Op. Att'y Gen. 258, 259 (1942) (advising in a letter opinion to the Maryland Board of Medical Examinations that the Board "should not exclude citizens of Italy and Germany who may apply for admission to the examinations given by [the] Board . . .").

121. 26 Op. Att'y Gen. 128 (1941) (advising in a letter opinion to the Maryland State Board of Dental Examiners that the Board did not have the authority to refuse a candidate's application for examination on the basis that the candidate is not a U.S. citizen).

122. MD. CODE ANN., EST. & TRUSTS § 4-301 (1991) ("Any individual, firm, trust, partnership, unincorporated association, corporation, or a governmental body may be a legatee."); see MD. CODE ANN., REAL PROP. § 14-101 (1988) ("Any alien who is not an enemy, may own, sell . . . [or] devise . . . property . . .").

123. *United States Fidelity & Guar. Co. v. Dempster*, 150 Md. 235, 240, 133 A. 723, 725 (1926); *Guyer v. Smith*, 22 Md. 239, 246 (1864).

124. See MD. CODE ANN., EST. & TRUSTS § 4-301 (1991); MD. CODE ANN., REAL PROP. § 14-101 (1988).

125. MD. CODE ANN., EST. & TRUSTS § 5-105(b)(4) (1991).

alien heir who will be denied full use and control of the property is deemed escheated to the county board of education.<sup>126</sup>

## V. CONCLUSION

The last time the General Assembly addressed the concept of state citizenship was in 1779<sup>127</sup> and the last time it substantively considered alien property rights was in 1826.<sup>128</sup> It is therefore no wonder that Maryland's legal fabric as it relates to aliens' rights is jumbled, antiquated, and inconsistent. With an increasing commitment to international trade and investment and a growing alien population, the State may be well advised to re-examine, streamline, and otherwise modernize its law on aliens, particularly with respect to state citizenship requirements, political involvement, and property rights.

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126. *Id.* § 9-108(A)(1).

127. Act of July 22, 1779, ch. 6 (1779 Md. Laws, Kilty, vol. 1).

128. Act of Feb. 11, 1826, ch. 66, 1825 Md. Laws 49.