

December 2019

Residence and Settlement Laws, Their Effect on Elections, Welfare and the Right of Free Movement

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Recommended Citation

Samuel A. Anderson, *Residence and Settlement Laws, Their Effect on Elections, Welfare and the Right of Free Movement*, 12 Wyo. L.J. 50 (1957)

Available at: <https://scholarship.law.uwyo.edu/wlj/vol12/iss1/6>

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gate owners of intermediate lands to permit such water to flow over their land and that the defendant could stop the water when it entered his property and use it since he was under no obligation to deliver it to the plaintiff.¹⁴ This case is inconsistent. Even though the plaintiff did not have an easement, he did have an appropriation, and when the court gave the defendant the right to use the water, it gave an upper landowner a right to water that had already been appropriated.

The Western Region is a growing agricultural region, and must use all the water it has at its disposal for maximum production. It has been stated that all over the region there are small amounts of water that are never used but which are allowed to continue to waste, generally because of the inability of persons to make valid appropriations.¹⁵ The Wyoming court, in the *Bower* case, has held that this seepage and waste water could be appropriated and that such appropriation would be valid against all but prior appropriators. This decision should make it possible for water users in Wyoming to search out and use water that has, previous to this decision, been neglected.

LESA LEE WILLE

RESIDENCE AND SETTLEMENT LAWS, THEIR EFFECT ON ELECTIONS, WELFARE AND THE RIGHT OF FREE MOVEMENT

The settlement and residence laws of this country affect each of us in a very real way. We may be required to reside in a state, county and precinct a certain period of time before we can exercise our voting privilege,¹ hold office, have full use and protection of the courts, are permitted to practice many professions, secure public assistance, medical² and psy-

14. The dissent quoted Ariz. Rev. Stat., § 45-101 (1956), which says, "The water of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds and springs on the surface, belong to the public and are subject to appropriation and beneficial use as provided in this chapter." The dissent contended that the water in this case belonged to the public and could be appropriated, and once appropriated should be allowed the protection afforded all such waters.

15. Guy O. Woodward, Extension Irrigation Specialist, speech given February 15, 1955, University of Wyoming.

1. Wyo. Const., Art. VI, § 2. "Every citizen . . . who has resided in the state or territory one year and in the county wherein such residence is located sixty days next preceding any election, shall be entitled to vote at such election, except as herein otherwise provided."

Wyo. Comp. Stat. § 31-104 (1951). ". . . (3) who, being a qualified elector in this state and a resident of, and registered in any precinct in this State, shall not be disqualified to vote in that precinct, although he has moved into some other precinct where he has not gained residence and been registered before the date of election."

2. A cause for special concern are the residence restrictions on the availability of care for the tuberculous. In control of tuberculosis there are very practical as well as humanitarian considerations with regard to residence restrictions. Although several states have abolished (or never had) residence requirements for tuberculosis care, others retain them. Taylor, "Medical Services Hampered by Restrictive Residence Requirements," in *Residence Laws; Road Block to Human Welfare*, National

chiatric³ services, child welfare⁴ and adoption⁵ services. It is possible for a person to come into a state with the requisite combination of actual presence plus intent to remain, which would make him a resident for many purposes, yet be denied many rights and services because he is a new resident rather than an old resident.⁶

This note is concerned primarily with residence or settlement laws⁷ as they affect elections and general welfare.⁸ Brief mention of the statutory requirements for general welfare in Wyoming and contiguous states (Colorado, Montana, Nebraska, South Dakota and Utah) will be made. Ancillary to the effect of settlement requirements on receipt of general welfare, consideration will be given the right of free movement and its companion, the right to stay in one place.

Travelers Aid Association, 1956, p. 29.

Wyoming imposes no residence requirement on aid to tuberculars, and only Utah of the states contiguous to Wyoming does. A state residence of two years is required in Utah; however, the statute provides further that the requirement may be waived if it is in the interest of public health. Utah Code Ann. § 55-6-16 (1953).

Recently, in Colorado, newspaper recognition was given to a child born with three congenital abnormalities which closed both her esophagus and her upper intestinal tract. The child's father was a day laborer unable to bear the extensive medical expense involved to save the child. While in the county where residence was established, the family received assistance; however, when they moved to another county they faced the dilemma of lost residence in the old county without yet having obtained residence in the new one by living there the requisite six months. The child was finally cared for by a private institution. Perkin, Molly's Girl Debbie: She Can Eat, Digest, Rocky Mountain News, March 7, 1957, p. 32, col. 2.

3. "Arbitrary red tape and regulations seemingly without rationale or reason . . . can help but to delay (the patient's) ability to discover and make use of his own potentials and resources." Davis, "How Restrictive Residence Laws Hamper Psychiatric and Mental Health Services," in *Residence Laws: Road Block to Human Welfare*, National Travelers Aid Association, 1956, p. 23.
4. E.g., since the general rule is that the child derives his residence from his parents' place of settlement, a serious problem might arise where the parents move to another state leaving the child in a foster home, with a neighbor, friend or acquaintance. One child welfare worker in a state having both state and local settlement laws wrote, "The question of residence is so involved and confusing that . . . we never really know, unless the case is clearcut, and it seldom is, where a child's legal settlement may be." Hughs, "The Cost to Children of Restrictive Residence Provisions," in *Residence Laws: Road Block to Human Welfare*, National Travelers Aid Association, 1956, p. 23.
5. Adoption agencies are so hampered by residence laws that often unwed mothers seeking obscurity in large out-of-state cities are driven from the doors of the agency into the hands of baby black market racketeers. Alice Lake, "Why Young Girls Sell Their Babies," *Readers Digest*, March, 1957, p. 117.
6. tenBroek, *The Constitution and the Right of Free Movement*, National Travelers Aid Association, 1955, p. 13.
7. Although "settlement" and "residence" as applied to poor laws are used synonymously by some courts, generally the terms convey different meanings. "Settlement" is the term most used in statutes relating to the poor and paupers whereas "residence" is found in other statutes. Words and Phrases, "Settlement," p. 53. "Settlement" for purposes of poor relief and legal "residence" ordinarily do not need to coincide geographically, and the terms are not synonymous. *State v. Juvenile Court of Wadena County*, 188 Minn. 125, 246 N.W. 544 (1933).

In this note, the term "settlement" will generally be used in connection with general welfare, and the term "residence" will be used otherwise.

8. The term "general welfare" will generally be used throughout this note. Synonymous descriptive terms are "poor relief," "general assistance," "general relief" and "public assistance." These programs are to be distinguished from so-called "categorical" assistance such as "Old Age Assistance," "Aid to the Blind," "Aid to the Totally and Permanently Disabled" and "Aid to Dependent Children." Mandelaker, *The Settlement Requirement in General Assistance*, 4 Wash. L.Q. 355 (1955).

The effect of residence laws on voting can be summarized simply by saying that a person cannot vote who has not complied with the statutory and constitutional residence requirements of the state wherein he seeks to cast his ballot. Thus a person, although a legal resident of the state, may be precluded from voting in the state elections because he has not established himself in the particular community, or precinct within the community, for the prescribed length of time. Likewise a person is precluded from voting in the national elections by reason of his failure to establish a certain length of residence in a state prior to election day, despite the fact that he may be a citizen of the United States in good standing. For example, the Constitution of Wyoming requires a one year residency in the state and a sixty day residency in the county before one may vote. Election day for President of the United States occurred on November 6, 1956. A person moving into Wyoming subsequent to November 6, 1955, with the intention to make this state his home, would probably not have been qualified to vote anywhere for President. He would not be eligible as a Wyoming voter because of the residence requirement. He could not have voted an absentee ballot in the state of his previous residence (except in a few states by statute) because his right to cast such ballot is based generally upon his continued residence in, but temporary absence from, the state.⁹ The right to vote for President and Vice President of the United States and for United States Senators and Representatives is conditioned upon qualification under state voting laws.¹⁰

The requirement of residence as a qualification for voting has been consistently upheld as a reasonable condition, the reason given being that only in this manner can voters be identified, fraud prevented, and the community assured of its members taking an active interest in government.¹¹ It might also be well to point out that the power to regulate elections is reserved to the states. Such regulations and requisities as the states impose will be upheld as valid by the Supreme Court of the United States so long as they do not deny or invade a right conferred by the federal constitution.¹² The requirement is well entrenched in American statutory law, virtually every state in the United States having made some provision for a period of residence as a prerequisite to the right to vote.¹³ It is interesting to note that where the constitution of the state requires residence for a prescribed period as a condition to the right to vote, a statute attempting to permit nonresidents to vote will be declared invalid.¹⁴

It will be well to consider at this point what is meant by voting residence. Generally it may be said that for the purposes of voting, "residence"

9. Wyo. Comp. Stat. §§ 31-1701-1702 (Supp. 1955); *Woods v. Blair*, 222 Ky. 201, 300 S.W. 597 (1927).

10. U.S. Const., Art. I, § 2; Art. II, § 2, Amend. XVII, par. 1; Wyo. Comp Stat. § 31-102 (1945).

11. 29 C.J.S., Elections § 19 (1941).

12. *Edmonds v. Banbury*, 28 Ia. 267, 4 Am.Rep. 177, 14 A.L.R. 260 (1886).

13. *McCrary on Elections*, § 52 (3d ed. 1887).

14. *Thomas v. MacKlen*, 186 S.C. 290, 195 S.E. 539 (1938).

means domicile.¹⁵ Thus a man will be deemed a resident if he is present in the place and has the requisite intent to remain indefinitely.¹⁶

Whether a student has a residence for voting purposes at the location of his school is a question of fact to be determined from the circumstances and a question of law to be determined from the governing statutes.¹⁷ Most courts hold that a student in a college town is presumed not to have a right to vote in that town,¹⁸ or, other language, that they do not acquire a voting residence in a place where they are not self-supporting, and when they intend to return to the family home.¹⁹ However, where the student has abandoned his former home, regards the state where he attends school as his home, intends to remain there an indefinite length of time, etc., he will be regarded as a resident for voting purposes.²⁰ Establishing a separate family through marrying will be significant so far as intention is concerned. In some states it is expressly provided that a student neither gains nor loses residence by absenting himself from his home for the purpose of attending school.²¹ At least he does not lose his right to vote by moving.

An inmate in a public or charitable institution will not by his mere involuntary presence therein lose his right to vote at his former residence, or gain such right in the district wherein the institution is located.²²

A person in the military or public service cannot acquire a voting residence in the place in which he is stationed or employed merely by reason of such stationing or employment.²³

However, contrary to the traditional rule that residents of federal areas within a state are denied suffrage by the state,²⁴ at least two recent cases have held that residents of federal areas are residents of the surrounding state for election purposes.²⁵ So much for voting as dependent on residence.

Historically, the settlement requirement as a condition precedent to receipt of general welfare comes to America from Medieval England. Prior to the time of Henry VIII, the poor of England subsisted entirely upon private charity. Provision was finally made for the care of the indigent in the Statutes of 1388.²⁶ The most famous English statute dealing with relief

15. *In re Rooney*, 172 App.Div. 274, 159 N.Y.S. 132 (1916); *McCrary on Election*, § 63 (3d ed. 1887); Note, 34 Geo. Wash. L. Rev. 121 (1934).

16. 28 C.J.S., Domicile § 9 (1941).

17. *Watermeyer v. Mitchell*, 275 N.Y. 73, 9 N.E.2d 783 (1937).

18. *Welsh v. Shumay*, 232 Ill. 54, 83 N.E. 549 (1908).

19. *Vanderpool v. O'Hanlon*, 53 Iowa 246, 5 N.W. 119 (1880); 34 Geo. Wash. L. Rev. 121 (1934).

20. *Chomeau v. Roth*, 72 S.W.2d 997, reh. den., 72 S.W.2d 1000 (Mo. 1934); *Welsh v. Shumay*, 232 Ill. 54, 83 N.E. 549 (1908); *McCrary on Elections*, § 68, (3d ed. 1887).

21. E.g., *Mich. Const.*, Art. III, § 2 (1908); *Saunders v. Getchell*, 76 Me. 158, 49 Am.Rep. 606 (1884).

22. *Israel v. Wood*, 93 Colo. 500, 27 P.2d 1024 (1933); *Merrill v. Shearston*, 73 Colo. 230, 214 Pac. 540 (1923). Note that the key word here is "involuntary."

23. *Wyo. Const.*, Art. VI, § 8; *Cambell v. Ramsey*, 150 Kan. 318, 92 P.2d 819 (1939).

24. Note, 30 N.Y.U. L. Rev. 499 (1955).

25. *Arapajolu v. McMenamin*, 113 Cal.App.2d 824, 249 P.2d 318 (1952); *Adams v. Londree*, 139 W. Va. 748, 83 S.E.2d 127 (1954).

26. 12 Ric. II, c. 7 (1388). The poor were directed to remain in the towns where they were dwelling at the time of the proclamation of the statute.

of the poor, popularly called the Elizabethan Poor Law of 1601, contained no settlement requirement.²⁷ The requirement was not given statutory cognizance until sixty-one years later in 1662.²⁸ Apparently the lawmakers hoped that by imposing settlement requirements the tide of beggars and poor streaming to the great cities from the poorer and more remote parts of the land would be stemmed.²⁹ Of course in retrospect we can see that the ultimate effect was simply to prevent migration toward better economic opportunity.

The Act of 1662³⁰ provided that if they acted within forty days of the person's coming into the parish, the appointed parish officials could remove any person likely to become chargeable to the parish as a poor person to the parish where they were "last legally settled." Such a statute obviously and directly affects one's right of free movement. The individual who could afford to pay ten pounds or more yearly rent was excepted.³¹ Nowhere in the statute is there to be found a definition of "settlement."

This was the state of the settlement laws when the colonists came to America.³² Probably for the purpose of self-preservation in harsh environs the settlement feature was incorporated in most of their laws.³³ In fact, the colonial statutes retained most of the harsh provisions of their earlier English counterparts.³⁴ How closely they were enforced is questionable.³⁵

The question of what constitutes settlement for welfare purposes, as the question of what constitutes residence for election purposes, is a broad one. Most statutes provide that settlement is acquired by residing in the prescribed area the prescribed length of time. However, under this type of

27. 43 Eliz., c. 11 (1601).

28. 13 & 14 Car. II, c. 12, s. 1 (1662).

29. In light of the Act's preamble such a conclusion would seem to be in order. See also, Mandelaker, *The Settlement Requirement in General Assistance*, 4 Wash. L.Q. 355, 357 (1955).

30. *Supra* note 28.

31. The language of the statute was ". . . in any tenement under the yearly value of ten pounds."

32. A history of early American settlement laws is traced in *Town of Plainville v. Town of Milford*, 119 Conn. 380, 177 Atl. 138 (1935) and *Matter of Porter*, 68 Misc. 124, 124 N.Y.Supp. 162 (1910).

33. Because of the English practice of dumping criminals and other undesirables in the new country, the difficulties involved in obtaining sustenance, and frequent displays of hostility toward those of different religious beliefs, the colonies early adopted settlement laws. Mandelaker, *The Settlement Requirement in General Assistance*, 4 Wash. L.Q. 355, 357 (1955).

34. E.g., New York even as late as 1801 passed a statute making settlement within the town or city contingent upon occupying a tenement of the value of \$30 per year upwards for two years, or in lieu thereof, that the person shall have occupied public office for one year, or paid taxes for two years. It further provided that if the overseers of the poor of the town failed to remove any person (other than those just mentioned) from town within twelve months of receiving notice in writing that such person had arrived in town, that person had a legal settlement. If a person was removed from the town and returned he was whipped 39 lashes, if a man, 25 if a woman—and such punishment was to be meted each time the person returned to a town where he had no legal settlement. It is suggested that such legislation as this contributed in some measure to the development of the frontier. *Matter of Porter*, 68 Misc. 124, 124 N.Y.Supp. 162 (1910).

35. For a thorough discussion of the colonial relief laws see Risenfeld, *The Formative Era of American Public Assistance Law*, 43 Calif. L. Rev. 175 (1955).

statute most courts have required intent plus residence, i.e., domicile. Some courts have held that residence alone is sufficient. A few statutes expressly make settlement the equivalent of domicile. In the final analysis it is a matter of statutory interpretation.³⁶

Mobility has long been a hallmark of America. Today our economy is geared to a mobile working force. That this is true is dramatically demonstrated by a few statistics. Since 1950, each year some five million Americans, more than 3% of our population, have changed residence from one state to another.³⁷ These have not been all one way movements. By and large, egress and ingress of migrants from any particular state or community tend to cancel each other out. Exceptions, however, such as the net increase of 1,360,000 in California's population during the first 3½ years of World War II, and the swelling of the populations of Florida, Arizona and Nevada from 18 to 31% stand out spectacularly.³⁸

America's migratory labor force alone is conservatively estimated at a million persons.³⁹ The President's Commission on Migratory Labor describes these people thus:

"Migratory farm laborers move lucklessly over the face of the land, but they neither belong to the land, nor does it belong to them. They pass through community after community, but they neither claim the community as a home, nor does the community claim them. Under the law, the domestic migrants are citizens of the United States, but they are scarcely more a part of the land of their birth than the alien migrants working beside them."

"The migratory workers engage in a common occupation, but their cohesion is scarcely greater than that of pebbles on the seashore. Each harvest collects and regroups them. They live under a common condition, but create no techniques for meeting common problems. The public acknowledges the existence of migrants, yet declines to accept them as full members of the community. As crops ripen, farmers anxiously await their coming; as the harvest closes, the community, with equal anxiety, awaits their going."⁴⁰

Migratory workers are often in need of general welfare, and discrimination against them is one of the undesirable results of settlement laws.⁴¹ Although the loss to society is great, relief officials by legal necessity can handle needy non-residents only by "dumping" or "passing on" into the next county or state. These practices, which are frequently aided by

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36. Mandelaker, *The Settlement Requirement in General Assistance*, 4 Wash. L.Q. 355, 368-369 (1955).
 37. Goodwin, "A Fluid Labor Force and Our Expanding Economy," in *Residence Laws: Road Block to Human Welfare*, National Travelers Aid Association, 1956, p. 8.
 38. Goodwin, *op. cit.* supra note 37.
 39. Of this total, one-half are domestic migrants, the other one-half are 100,000 Mexicans under contract, a few British West Indians and Puerto Ricans, and 400,000 illegal Mexicans (i.e., Mexicans not under contract). *Migratory Labor in American Agriculture*, Report of the President's Commission on Migratory Labor, 1951, United States Government Printing Office, Washington, D.C., p. 3.
 40. *Migratory Labor in American Agriculture*, Report of the President's Commission on Migratory Labor, 1951, United States Government Printing Office, Washington, D.C., p. 3.
 41. Mandelaker, *The Settlement Requirement in General Assistance*, 4 Wash. L.Q. 355 (1955).

"removal laws,"⁴² simply redistribute these people into other communities rather than solving the problem of nonresidents in need.⁴³

There must be measures provided to solve the financial dilemmas which specific communities face when confronted with large groups of immigrants. Some possibilities will be suggested at the conclusion of this note.

Then there is the family not forced to migrate, but which moves for reasons, real or fancied, sufficient to its members, usually the hope that the grass will be greener on the other side of the fence. Arrival at the destination frequently unveils a less appealing picture. The family has exhausted its resources and is suddenly dependent on general welfare. Local welfare cannot assist because of a settlement law. The removal law then takes over and the family is sent back to its last place of settlement. Of course, in all likelihood the family left that place because, for them, an unsatisfactory situation existed, as well as because of a desire to better their lot in life. The move in retrospect may have been ill advised, still are we to penalize a person for doing what his situation may seem to necessitate and what our economy very often demands?⁴⁴ Settlement laws in effect do this.

As suggested previously, most states in the union make settlement for a period a requisite to receipt of general assistance. The periods range from less than one year to six years.⁴⁵ A few states have dropped this requirement.⁴⁶ Montana, New York and Utah require a state residence only, thus greatly simplifying administrative problems and mitigating the effects of the law for those living within the state.⁴⁷ Colorado, Nebraska, South Dakota and Wyoming require a local residence in addition to state residence. This tends to complicate administration due to the necessity for acquiring two settlements.⁴⁸

Although New York requires one year for a state residence, it gives statutory recognition to the care of nonresidents by providing care and relief for those who reside in or are "found in" the public welfare district.⁴⁹

42. Mandelaker, *op. cit. supra* note 41.

43. Mandelaker, *Exclusion and Removal Legislation*, 1 *Wis. L. Rev.* 57 (1956).

44. Rogers, "Human Values and Personal Problems of Movement," in *Residence Laws: Road Block to Human Welfare*, National Travelers Aid Association, 1956, p. 12.

45. Mandelaker, *op. cit. supra* note 41.

46. *New York and Pennsylvania*.

47. *Mont. Rev. Codes Ann.* § 71-302 (1947) (One year); *N.Y. Social Welfare Law* § 62 (1941), 117 (Supp. 1956) (One Year); *Utah Code Ann.* § 55-2-29 (Supp. 1955) (One year). In New York local residence has been retained to some extent, as the statute place financial responsibility for the cost of medical and institutional care for state residents on the community in which the recipient has spent a continuous six-month period in two years prior to the granting of such relief. *N.Y. Social Welfare Law* § 62 (2) (Supp. 1956).

48. *Colo. Rev. Stat. Ann.* §§ 119-3-9, 119-3-10 (1953) (Three years state, six months county); *Neb. Rev. Stats.* § 68-115 (1) (Supp. 1953) (Provides that settlement can be acquired by one year's residence in the county, but that persons who have resided one year in the state but not in any one county have settlement in the county in which they have resided for six months); *S.D. Code* § 50.0102 (4) (1939) (One year in state, 90 days in county); *Wyo. Comp. Stat.* § 25-132 (Supp. 1955) (One year state, one year county).

49. *N.Y. Social Welfare Law* § 62 (1941).

Mr. Peter Kasius, Deputy Commissioner for New York Affairs, New York State Department of Social Welfare, points out that the effect of an open door policy does cost more when measured in relief dollars alone, but that people in need have an inherent right to be helped whether they are residents or nonresidents; that arbitrary restrictions forcing temporary and haphazard relief produce a second-class citizenship not in keeping with modern society. The effect of removing arbitrary restrictions is to untie the hands of public agencies and allow implementation of more advanced concepts of social therapy.⁵⁰

The removal of residence requirements is of course no panacea for all our ills, but neither does the continued imposition of them alleviate any basic social problem; it rather tends to aggravate it.

One can hardly consider the effect of residence or settlement laws without mentioning the so-called "right of free movement."⁵¹ This right, recognized as basic by Blackstone,⁵² was expressed in the Articles of Confederation.⁵³ However, it was not articulated in the United States Constitution. This may have been because the framers thought it so obvious a right that its inclusion seemed unnecessary.⁵⁴ In any event, that there is such a right seems firmly inculcated in the mind of the general American public, and in a round-about fashion it has been given judicial recognition in many United States Supreme Court decisions,⁵⁵ the most recent of which is *Edwards v. California*.⁵⁶ In this case Edwards was convicted under a California statute passed during the depression of the 1930s which made it a misdemeanor for anyone knowingly to bring or assist in bringing into the state a nonresident indigent person. Edwards had brought his indigent brother-in-law into the state. In reversing the lower court, Mr. Justice Byrnes, speaking for the Court, held that the statute imposed an unconstitutional burden upon interstate commerce, and that it was not a valid exercise of the police powers of the state. In his concurring opinion (in which he was joined by Mr. Justice Black, and Mr. Justice Murphy), Mr. Justice Douglas said he was unwilling to rest the decision on the Commerce Clause, but was of the opinion that the right of persons to move freely between states occupied a more protected position under the Constitution than the movement of cattle, fruit, steel and coal. He stated that the right to move freely between states is an incident of national citizenship protected by the Privileges and Immunities Clause of the Fourteenth Amend-

50. Kasius, "What Happens in a State Without Residence Requirements," in *Residence Laws: Roadblock to Human Welfare*, National Travelers Aid Association, 1956, p. 18.

51. For an excellent discussion of this "right" see Vestal, *Freedom of Movement*, 41 *Iowa L. Rev.* 6 (1955).

52. 1 Blackstone, *Commentaries* § 134.

53. *Articles of Confederation, Formation of the Union*, United States Government Printing Office, Washington, D.C. (1927).

54. However, some feel that it was deliberately omitted.

55. E.g., see *Edwards v. California*, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941) for a review of cases; tenBroek, *The Constitution and the Right of Free Movement*, National Travelers Aid Association, p. 13 (1955).

56. 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119 (1941).

ment, and that simply because a citizen is poor should be no exception. Mr. Justice Jackson concurred in the result, but not on the Commerce Clause ground. He, too, considered the Privileges and Immunities Clause the most appropriate basis upon which to rest the decision. However, he was unwilling to say that such right of the United States citizen to migrate from state to state was unlimited, and pointed out that in addition to being subject to all constitutional limitations imposed by the federal government, such a citizen is subjected to some control by state governments. E.g., a person may not, if a fugitive from justice, claim freedom to migrate unmolested; nor may he carry contagion about. He then pointed out the indigence in itself was neither a source of rights nor a basis for denying them, and he therefore concluded that California's restriction on that basis was improper.⁵⁷

Included in, and ancillary to the right of free movement, is the right to stay in one place. The federal constitution nowhere explicitly delineates this as a right. Is it to be implied? There have been dramatic instances of violation of this right, if in fact it is one, e.g., the Indians behind the frontier, the Latter Day Saint's expulsion from Missouri in the Winter of 1838 and 1839, the IWWs from Arizona in the 1920s, and most recently the Japanese Americans from California and the West Coast during World War II.

Some have believed that the mass expulsion of Japanese from the coastal areas represents one of the worst infractions of constitutional rights of citizens and non-citizens alike this nation has ever experienced. Over 100,000 men, women and children were imprisoned, 70,000 of them citizens of the United States, without indictment or proffer of charges, ostensibly pending inquiry into their loyalty.⁵⁸ This denial of due process was justified by the Supreme Court of the United States as necessary under the exigencies of the situation as a valid exercise of the War Power of the National Government to protect against sabotage and espionage.⁵⁹ However, like sanctions were not taken against German and Italian citizens, nor against the Japanese in the Hawaiian Islands where they represent 32% of the population, or 160,000 persons.⁶⁰

If there is a right to remain in one place to be implied from the Con-

57. For an interesting discussion of the constitutionality of residence restrictions and the constitutional bases used by the Supreme Court in sustaining a "right of free movement," see tenBroek, *op. cit. supra* note 54.

The Supreme Court in its effort to constitutionalize the right of free movement has mentioned the Comity Clause of Art. 4, the Privileges and Immunities Clause of the Fourteenth and Fifth Amendments, the Equal Protection Clause of the Fourteenth Amendment and the Commerce Clause.

58. Rostow, *The Japanese American Cases - A Disaster*, 51 *Yale L.J.* 489 (1945).

59. *Hirabayashi v. United States*, 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943); *Ex Parte Mitsuye Endo*, 323 U.S. 283, 65 S.Ct. 208, 89 L.Ed. 243 (1944) (The Supreme Court in this case held that although the expulsion of Miss Endo was justified, her detention after a loyalty check was not); *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944), *reh. den.*, 324 U.S. 885.

60. Rostow, *op. cit. supra* note 58 at 494.

stitution of the United States, it has never been given unequivocal Supreme Court cognizance.⁶¹

The trend today is for courts to give less strict construction to residence and settlement requirements.⁶² It is conceivable that one day the Supreme Court of the United States will hold them unconstitutional as violative of the right to move freely. Also, exclusion features of many statutes will stand on infirm ground if the Supreme Court should declare an implied constitutional right to remain where one is. Presently, however, the Privileges and Immunities and Equal Protection Clauses furnish the greatest hope for ridding ourselves of settlement laws.

The residence requirement pertaining to election laws may serve a special purpose in preventing fraud in today's mechanized United States, but such laws have little place in determining the rights of people to assistance. Assistance should be given without discrimination. At the very least, states should repeal local residence requirements, but preferably the state requirement should be discarded as well. It is difficult to know what results would follow in the wake of a wholesale repeal of residence and settlement laws as pertaining to welfare, but certainly federal aid to general assistance as it is given to the "categorical" programs⁶³ would cushion much of the local financial strain on specific counties and towns when confronted with large groups of immigrants.

Education and counselling are all important in assuring that migration is not without purpose. Many relief dollars could be saved by a proportionally small investment in adequate guidance services.

The United States has become a great nation for a variety of reasons, not least among which has been individual sensitivity to the needs of our fellow man, based generally on fundameneal Christian concepts. However, this concern has not always been reflected in our statutory law, specifically our poor laws.

SAMUEL A. ANDERSON

PRESCRIPTIVE ACQUISITION OF EASEMENTS IN WYOMING

It is generally stated that to establish an easement by prescription there must be an open, exclusive, continued and uninterrupted use or enjoyment of another's land under claim of right, adverse to and with the knowledge of the owner of the property.¹ The interpretation of the facts

61. tenBroek, *The Constitution and the Right of Free Movement*, National Travelers Aid Association, p. 13 (1955).

62. Mandelaker, *Exclusion and Removal Legislation*, 1 Wis. L. Rev. 57, 73 (1956).

63. Mandelaker, *op. cit. supra* note 8.

1. Thompson, *Real Property* § 414 (perm. ed. 1939); 17 Am.Jur., *Easements* § 59; 4 Tiffany, *Real Property* §§ 1195-97, 1199, 1291, 1202 (3d ed. 1939).