

in Article 2 can be grounds for

equal protection clause is that this is explicitly, "equal protection of person has equal protection only for constitution. He or she, therefore, comes to the right to due process the right to health care which is not constitution or by the Supreme Court.

Article 8), I am aware, furthermore, I stated in *Marbury v. Madison* which consists in the right of every person, whenever he receives an injury." "a general and indisputable rule, that every person has a right to a legal remedy by suit, or action at law for the violation of his or her right of property, liberty, or human dignity (Article 1), it is a principle, such as Paust (1983), citing which have referred to human dignity, and the right to a legal remedy.

correspondences between the right to a legal remedy, or a right to a remedy in the United States Constitution. To be consistent with my judgment in this case, an intelligent layperson's reading of the Constitution shows that constitutional interpretation does not appear reasonable that a person would know that the constitution does not emphasize, I think that the people of the United States, as a layman, therefore, I know that I have a right to marry or the right to travel which is evidenced by such "injuries" (i.e. loss of a home or homelessness, it does not detract from the apparent rights to a legal remedy and served a prison sentence for a crime, if found innocent, would he or she be allowed to live the rest of his or her life? If a hungry child who did not qualify for a federal food stamp, would she be allowed to live? If a child who did not qualify for a federal food stamp, would she be allowed to live? My question is, but rather to point out that the right to a legal remedy appears to be easily recognizable. The right to a legal remedy allows everyone the right to honor and respect. *Van Alstyne v. Van Alstyne* (1964) does not exempt public

officials from criticisms even if such criticisms result in defamation of character. The sustenance of that ruling comes from Amendment I of the Constitution which permits freedom of speech and the press even if it is directed against government officials. It appears, however, that according to the ruling of that case, private individuals do have the right to a good reputation if, in exercising one's First Amendment rights, there is not total disregard for the truth. I have chosen, therefore, to conclude that overall the Federal Constitution does guarantee the right as stated in Article 12(b) of the Universal Declaration.

Another question concerns whether the phrase "We, the People" is sufficient enough to correspond to Article 3(a) of the Universal Declaration which states that the will of the people shall be the basis of government. Although there is some correspondence, I view this resemblance as having no major substance, especially because James Madison had proposed that the Federal Constitution include a more substantive statement that "All power is originally vested in, and consequently derived from, the people. That government is instituted and ought to be exercised for the benefit of the people" (Chafee, 1952b, p. 48). The First Congress rejected his proposal. Furthermore, as I will soon discuss below, the Supreme Court has ruled in *Jacobson v. Massachusetts* (1905) that the spirit of the Preamble cannot be invoked as a basis for claiming a right.

Although my research did not reveal any Supreme Court cases which guaranteed economic and social rights as defined in Articles 22 to 27 of the Universal Declaration, it is necessary to mention the relatively well known case of *Brown v. Board of Education* (1954). In that case, the Supreme Court did state, for example:

Education is perhaps the most important function of state and local governments....It is the very foundation of good citizenship....It is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment....[and]it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. (Gunther, 1985, p. 637)

Despite the importance that the Court placed on education, I noticed no assertion that education is a human right, that it is the obligation of government to provide for this right. Consequently, I chose not to include education as a right guaranteed by the United States Constitution.

Concerning Article 27(2) of the Universal Declaration which expresses the right of an author to the protection of interests resulting from his or her scientific and artistic productions, Article I, S8.8 of the United States

Constitution states that Congress has *the power* to secure to authors the right to their respective writings and discoveries. Since one of the first acts of Congress was to establish a patent office in 1790, and because it has consistently enacted legislation to protect the rights of authors and inventors (Bouvier, 1914; Patents, 1984), I decided, despite the qualification by the words "the power to," that there is a correspondence between these articles.

The following summative statements can be made about the Federal Constitution in relation to the Universal Declaration of Human Rights. First, it does refer to the freedom of the individual at birth who is endowed with reason and conscience. My analysis suggests neither mention of the dignity of the individual nor notions of brotherhood as stated in the Universal Declaration.

It appears almost entirely consistent with notions of civil and political rights as stated in Articles 2 through 21 of the Universal Declaration. The only exceptions appear to be the right to an effective remedy as defined in Article 8 and that the will of the people shall be the basis of the authority of government as stated in Article 21.

Apart from extremely weak phraseology of the general welfare and establish justice clauses of the Federal Constitution, there appear no correspondences with the positive rights as described in Articles 22 through 27. The only exception is in Article 27 which states that an individual has the right to protection of moral and material interests resulting from scientific, literary or artistic production which he or she authored.

There are no correspondences with notions of duties and solidarity rights as defined in Articles 28-30 of the Universal Declaration.

#### *Discussion of the General Welfare and Establish Justice Clauses*

The question now is if an analysis of Supreme Court interpretations of these two clauses can enlighten this discussion on the comparison of the United States Constitution with the Universal Declaration. In order to examine these two phrases, as a major part of my research, I accessed LEXIS, a computerized system for legal research, requesting information on Supreme Court cases which utilized the two phrases "establish justice" and "general welfare."

My research revealed, first of all, that the "Supreme Court long ago determined that the preamble *by itself* [italics added] affords no basis for a claim either of governmental power or of private right (*Jacobson v. Massachusetts*, 197 U.S. 11)" (Chase, 1984, p. 367). In that case, the Supreme Court decided that the plaintiff Mr. Henning Jacobson could be fined for not complying with a state statute ordering him to have a vaccination against an epidemic of smallpox in Cambridge Massachusetts. It appeared, however, that the Court based its ruling not because protecting the general welfare necessitated the plaintiff's vaccination, but rather because Mr. Henning's

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personal liberty secured by the U.S. Constitution in the 14th Amendment against state deprivation was not infringed by the Massachusetts statute requiring compulsory vaccination. It contended furthermore, that although the public welfare of the community was at stake which may have necessitated his vaccination, "The Spirit of the Federal Constitution or its preamble cannot be invoked, apart from the words of that instrument, to invalidate a state statute" (197 U.S. 643). After reading the cases that have, however, utilized these two clauses as they appear in the Preamble, my overall impressions are that phrases in the Preamble can bolster or lend support to judicial decisions which invoke other phrases in the body of the Constitution. Although *by themselves* these phrases do not appear to have value, they, nevertheless, do have some interpretive significance.

When the Supreme Court, moreover, referred to the general welfare clause as stated in Article I, Section VIII, "The Congress shall have Power to lay and collect Taxes, Duties and Imports and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States" it appeared most concerned in determining the appropriateness of Congress's interpretation of that clause.

In this analysis, therefore, I will relate my understanding of basic themes along with major cases which seem representative of predominant interpretations of these clauses according to opinions of the Supreme Court, whether they appear in the Preamble or in Article I, Section VIII. My concerns are only with cases which appear related to clauses in the Universal Declaration. I will emphasize, furthermore, only those aspects of cases which help illuminate the meanings of Supreme Court interpretations.

The General Welfare Clause.

It appears that the first major theme is that promoting the general welfare means that some individuals must be burdened more than others, at least as related to public appreciation of cultural landmarks. In *Penn Central Transportation Co. v. New York City* (1978), for example, the Supreme Court held that the designation of Grand Central Terminal as a landmark building by New York City, which therefore precluded any major modifications of that railroad terminal which would destroy its cultural significance, did not constitute an arbitrary taking of property. To quote the opinion of the Court:

It is, of course, true that the Landmarks Law has a more severe impact on some landowners than on others, but that in itself does not mean that the law effects a "taking." Legislation designed to promote the general welfare commonly burdens some more than others. (57 L.Ed.2nd 654)

Although the designation of this building as a cultural landmark might cut into the profits of its owner, Penn Central Transportation, the Supreme Court commented that it was necessary for Penn Central to sacrifice these profits in order that the community benefit from the enjoyment of this cultural landmark.

Promoting the general welfare also means non-discrimination "based on race, color, religion, or national origin in...public accommodations" (13 L.Ed.2nd 262). In *Heart of Atlanta v. United States* (1954) the Supreme Court invoked that clause by referring to that phrase in the Civil Rights Act of 1957 and determined that the owner of Heart of Atlanta Motel must rent rooms to blacks.

Another theme emanating from the general welfare clause is that individuals are entitled to an uninterrupted provision of public assistance, unless a pre-termination evidentiary hearing holds otherwise. Public assistance, furthermore is "not mere charity, but a means to 'promote the general welfare'" and "guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity" (25 L.Ed. 297). In *Goldberg, Commissioner of Social Services of the City of New York v. Kelly* (1970), a welfare recipient contested what he felt was the arbitrary termination of his welfare benefits. Despite Goldberg's claim to conserve governmental fiscal and administrative resources, the Court determined that the plaintiff's interests to the "basic demands of subsistence" far outweighed New York City's concerns.

In *Helvering v. Davis* (1937), the Supreme Court upheld the constitutional notion that the discretion to spend for the general welfare, unless done arbitrarily, is up to Congress. The Court, therefore, concurred with a congressional program which taxed covered employers and employees in order to provide for old age benefits under the Social Security Act of 1935. The opinion of the Court asserted for example:

Congress did not improvise a judgment when it was found that the award of old age benefits would be conducive to the general welfare....The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose. Only a power that is national can serve the interests of all. (81 L.Ed. 1315, 1317)

In a number of cases, the Court also seems to have been faced with very basic issues concerning individual rights, specifically the right to property, vs.

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the welfare of the community, such as access to products and the development of projects that are in the public interest. In *Nebbia v. New York* (1934), for example, the Court acknowledged that promoting the general welfare is inherent in government, and that "correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision" (78 L.Ed. 949). In this case, therefore, it was permissible for the State of New York to fix prices on milk, thereby cutting grocers' profits, because that commodity was vital to the public interest. Also, in *Ivanhoe Irrigation District v. Mc Cracken* (1958), the use of federal monies for "largescale projects for reclamation, irrigation, or other internal improvement" which are for "a valid public and national purpose, the promotion of agriculture (2 L.Ed.2nd 1327)" is consistent with the promotion of the general welfare.

Often the Supreme Court was asked to consider state interpretations of the phrase "to promote the general welfare." In *Green v. Frazier* (1920) it agreed with the Supreme Court of North Dakota which stated that taxes to provide homes for people was consistent with this phrase and did not constitute a taking of property without due process. In *Butler v. Michigan* (1957), however, it disagreed with the state of Michigan which insisted that "By...quarantining the general reading public against books not too rugged for grown men and women in order to shield juvenile innocence, it is exercising its power to promote the general welfare" (1 L.Ed.2nd 414).

My analysis, therefore, of major themes pertinent to the general welfare clauses and cases, which appear representative of these motifs, suggests that Supreme Court interpretations of this clause do not conclusively guarantee other rights than those already stated in the United States Constitution. I did not find the *Penn Central* decision as consistent with Article 27 of the Universal Declaration which speaks of the right to freely "participate in the cultural life of the community." *Heart of Atlanta's* ruling against non-discrimination in public accommodations can already be subsumed under the equal protection clause. *Goldberg* guarantees only due process before public assistance is terminated. I noticed no statement which guaranteed in substance the "right to a standard of living adequate for the health and well-being" of a person and his or her family as stated in Article 25 of the Universal Declaration. In *Helvering*, old age benefits are only for covered employees and not for *all*.

My analysis suggests, however, that while the general welfare clause alone cannot be the basis for claiming a right, it can nevertheless, be used as a vehicle to justify regulation and taxation in order to promote the public interest. The Supreme Court, for example, regarded foods such as milk (*Nebbia*), public housing projects, (*Green*), and some development projects (*Irrigation*), *Ivanhoe*

as worthwhile spheres to regulate and tax in order to promote the general welfare. Overall, however, I did not regard these specific instances as enough evidence to state definitively any comparison between the United States Constitution and Article 29 of the Universal Declaration which asserts that rights can be subject to limitations for the "purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society."

#### The Establish Justice Clause.

Like the general welfare clause, this clause did not reveal any direct correspondences with rights as guaranteed by the Universal Declaration. The phrase, "establish justice," however, as invoked by the Supreme Court, did seem to justify limitations to certain freedoms in some instances. To quote the opinion of the Supreme Court in *Montana Company v. St. Louis Mining*, for example, (1894):

To "establish justice" is one of the objects of all social organizations, as well as one of the declared purposes of the Federal Constitution, and if, to determine the exact measure of the rights of parties it is necessary that a temporary invasion of the possession of either for purposes of inspection be had, surely the lesser evil of a temporary invasion of one's possession should yield to the higher good of establishing justice. (38 L.Ed. 400)

On the matter of excise taxes, furthermore, the Court in *Ward v. Maryland* (1870), stated:

Excise taxes...may be imposed by the States, if not in any sense discriminating; but it should not be forgotten that the people of the several States live under one common Constitution, which was ordained to establish justice, and which, with the laws of Congress, and the treaties made by the proper authority, is the supreme law of the land; and that that supreme law requires equality of burden, and forbids discrimination in State taxation when the power is applied to the citizens of the other States. (20 L.Ed. 453)

While the Supreme Court, therefore, has regarded it "just" in *Montana Company* to inspect a mine in order to assess its true value and in *Ward* to spread the burden of taxation to all states equally, thereby prohibiting a state to require a license by non-residents to sell certain articles, I did not perceive these opinions to substantively reflect notions as described in Article 29 of the

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Universal Declaration. In addition, no judicial opinion referred to notions of economic and social justice or elaborated upon notions of positive rights as described in the Universal Declaration when referring to the establish justice clause.

Of significance perhaps is that these two cases just mentioned come *before* the *Jacobson* decision which declared that the Preamble could not be solely invoked as a justification to claim a right. Not one case after *Jacobson* seemed to use the phrase "establish justice" as the basis for any entitlement. Whereas these two cases are not entitlements per se, the limitations of rights they speak of have some relevance to Article 29 of the Universal Declaration. I find it ironic that the Supreme Court Justices cannot refer to the need to establish justice by referring to the Preamble, the only place in the United States Constitution which speaks directly about justice. Although this phrase can be used with other clauses in the body of the Constitution, apparently the Supreme Court has chosen essentially not to invoke that clause to assist in establishing the basis for a right.

Overall, therefore, an examination of these two phrases reveals that they do not extend any of the rights in the United States Constitution already described as comparable with the Universal Declaration.