Liberty Tree

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An uniform Rule of Naturalization

The current president of the united States, in just his first week in office, stirred up a legal storm concerning the admittance of aliens into these united States. Donald Trump's executive order on January 27, 2017 effectively bans citizens from Iraq, Syria, Iran, Libya, Somalia, Sudan and Yemen from entering the U.S. for the next 90 days, while the Secretaries of Homeland Security and State, together with the Director of National Intelligence, "conduct a review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat."[1]

EO in question is authorized by Congress

A lot of the brouhaha over this order ignores the fact that Congress gave broad discretion to the president on the issue of alien entrance, see Title 8 U.S.C. § 1182(f), cited explicitly in the EO as authority for the order:

> Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Trump proclaimed "that the immigrant and nonimmigrant entry into the United States of aliens from countries referred to in section 217(a)(12) of the INA, 8 U.S.C. 1187 (a)(12), would be detrimental to the interests of the United States, and I hereby suspend entry ... of such persons for 90 days ..." At Title 8 U.S.C. § 1187(a)(12), those countries are referred to as Iraq, Syria, and any other countries named as areas of concern. under the authority of the Secretary of State. So the *rest* of the countries the EO affects are included because they were *already cited* as areas of concern under the Obama administration.

A judge says no

Immediately after the EO issued, the State of Washington, later joined by the State of Minnesota, filed for a temporary restraining order against the 90-day ban, and Judge James Robart of the Western District of Washington granted the TRO, stating that all federal officers, agents, servants, employees, etc. are enjoined and re-

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Austrian-born Joseph Keppler, an immigrant and founder of *Puck,* America's first successful humor magazine, authored the above cartoon in 1880 (only a portion is shown). As Uncle Sam welcomes immigrants onto the "U.S. Ark of Refuge," a billboard proudly proclaims: "No oppressive taxes; No expensive kings; No compulsory military service; No knouts or dungeons." The placard next to the door proclaims: "Free education; Free land; Free speech; Free ballot; Free LUNCH." These two signs contradict each other: many of the "free" things offered are ultimately expensive, and oppressive taxes must be laid to accomplish them. (Today, the satirical or ironic nature of this cartoon is lost on many; one person tweeted that it means "we were far more welcoming to refugees 135 years ago.")

1. https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states

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strained from enforcing the EO. The injunction covered *all* U.S. borders and ports of entry, reasoned the judge, because if it were only applied partially to Washington and Minnesota, the resulting partial implementation "would undermine the constitutional imperative of a 'uniform Rule of Naturalization' and Congress's instruction that 'the immigration laws of the United States should be enforced vigorously and uniformly,'" quoting *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015).

> The Congress shall have Power … To establish an uniform Rule of Naturalization … throughout the United States.
>
> Article 1, Sec. 8, Cl. 4

At least, the judge got it right that the Constitution requires an uniform rule of naturalization, but it seems he ignored the rest of the Constitution. To see how, let's revisit the framing of the Constitution with respect to Congress' power to restrict or prohibit immigration.

"Uniform rule" to avoid too-easy citizenship?

In 1787 and 1788, Alexander Hamilton, John Jay, and James Madison, as promoters of the current Constitution, wrote a series of opinion pieces for newspapers to persuade the public to support ratification, now known as *The Federalist Papers*. Madison was the only author to extensively discuss immigration. In *Federalist* No. 42, he wrote about the potential results of the States each having their own rules for naturalization:

> In one state, residence for a short term confers all the rights of citizenship; in another, qualifications of greater importance are required. An alien, therefore, legally incapacitated for certain rights in the latter, may, by previous residence only in the former, elude his incapacity; and thus the law of one state be preposterously rendered paramount to the law of another, within the jurisdiction of the other. … What would have been the consequence, if [aliens who had rendered themselves obnoxious], by residence or otherwise, had acquired the character of citizens under the laws of another State, and then asserted their rights as such, both to residence and citizenship, within the State proscribing them?

Madison concluded that, without one Federal rule for all states, "The very improper power would still be retained by each state, of naturalizing aliens in every other state."

This power of naturalization was thus inserted into the Constitution at Art. I, Sec. 8, Cl. 4: "The Congress shall have Power … To establish an uniform Rule of Naturalization … throughout the United States."

A uniform rule of naturalization, by itself, would not place all power to admit immigrants in the hands of the federal government, however; for that, we have to turn to Article I, Sec. 9, Cl. 1.

Framers wrestled with slavery vs. migration

A first draft of the Constitution stated that "no tax or duty" was to be laid on the "migration or importation of such persons as the several states "shall think proper to admit, nor shall such migration or importation be prohibited." Thus, even if an uniform rule was set for naturalization, the states would have retained the authority to admit migrants directly. But this paragraph was *rejected* by the framers.

The "importation" of persons refers to slaves. The framers had to balance the desire to ensure that southern States who depended on slavery would ratify the Constitution with the desire of many at the convention to ban the evil practice of importation of slaves entirely. Thus, the next proposal was to allow "migration or importation of such persons" as the "now existing States shall think proper to admit" until 1800, but to impose a "tax or duty" on *migration* as well as importation. This was also rejected, and the final affirmed clause, as it stands today, reads:

> The migration or importation of such persons as the several states now existing shall think proper to admit shall not be prohibited by the legislature prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

It is clear that, after 1808, Congress had the power to *prohibit* the migration of persons, and it has repeatedly done so, often to a great deal of consternation of various other persons residing in the States, but also often at the insistence and outcry of those same citizens.

First law restricting naturalization

Having the power to make an uniform rule on naturalization, but no power to ban migration until after the year 1808, the first Congress immediately passed a law restricting naturalization to free (not indentured!) white persons:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any alien, **being a free white person**, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application, and the proceedings thereon; and thereupon such person shall be considered as a citizen of the United States. And the children of such persons so naturalized,

> The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight.
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> Article 1, Sec. 9, Cl. 1

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> dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States. And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens: *Provided,* That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States: *Provided also,* That no person heretofore proscribed by any state, shall be admitted a citizen as aforesaid, except by an act of the legislature of the state in which such person was proscribed. APPROVED, March 26, 1790. 1 Stat. 103.

From the beginning, the law was concerned that those desiring to be citizens were of good moral character and would take an oath to support the Constitution. This is as important now as it was then, if the united States are to retain any coherence. Any common law court of record could administer the oath, and the clerk would record that the oathtaker was a citizen. (Note that this statute is the only one ever to utilize the term "natural born citizen," and those born to fathers who never resided in the United States were *not* citizens.)

The importance of excluding aliens

After 1790, and for most of the 19th century after 1808, laws concerning immigration and naturalization were not coordinated, and neither body of law referenced the other. The most important naturalization change was the 14th Amendment, allegedly ratified in 1868: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

The amendment doesn't affect Congress' power to limit naturalization to certain classes of people, however. Congress began serious attempts to regulate immigration toward the end of the 19th century. The Chinese Exclusion Act of 1882 was one of the first laws of this nature, providing a 10-year moratorium on Chinese labor immigration. The Scott Act of 1888 further prohibited Chinese laborers who had gone abroad or planned future travel outside the United States from returning. Chae Chan Ping was denied entry into the United States under this Act, and he took his challenge to the supreme court.

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"Where the Blame Lies" by Grant E .Hamilton, published in *Judge* on April 4, 1891. Uncle Sam glowers at recently arriving immigrants, at his feet a sheet of paper which reads: "Mafia in New Orleans, Anarchists in Chicago, Socialists in New York." A man (Judge) holds a top hat and gestures toward the horde of arriving immigrants, variously labeled "German socialist," "Russian anarchist," "Polish vagabond," "Italian brigand," "English convict," "Irish pauper." Judge (*to Uncle Sam*): "If Immigration was properly Restricted you would no longer be troubled with Anarchy, Socialism, the Mafia and such kindred evils!" The background sign says: "Entry for Imigrants; Baggage the only requisite." Even then, "baggage" was used to mean an impediment, and Hamilton is clearly stating that the immigrants allowed in are bringing in only the "baggage" of poverty, crime, and anti-constitutional philosophies. Today, the dangerous baggage at issue for many Americans is Islam, Islamic terrorism, and Shariaists.

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That court upheld the law, explaining that every independent nation must be able to exclude aliens:

> That the government ... can exclude aliens from its territory is a proposition which we do not think is open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is part of its independence. If it could not exclude aliens, *it would be to that extent subject to the control of another power. ...*
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> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting through its national character *or from vast hordes of its people crowding in upon us. ...*
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> The power of exclusion of foreigners ... as part of those sovereign powers delegated by the Constitution ... cannot be granted away or restrained on behalf of any one. ... Nor can their exercise be hampered, when needed for the public good, by any consideration of private interest.[2]

As legal scholar and attorney Edwin Vieira has aptly pointed out, the president has a ***duty*** under Article II, Sec. 3, to "take Care that the Laws be faithfully executed." Thus, where the president is convinced that a 90-day ban to keep Americans safe from a class of persons among whom are potential terrorists, and *if* "indeed, ... the very salvation of this country so demands,"[3] then he *must* do so.

In a future issue, we will explore further ramifications of the executive order, the judge's decision, and the power of the president to ignore that decision, if he wishes. Stay tuned — there is much to discuss, and much to consider, if we want to be informed citizens who insist on the Constitution being followed.

2. *Chae Chan Ping v. United States*, 130 U.S. 581 (1889).
3. http://www.newswithviews.com/Vieira/edwin282.htm

Liberty Works Radio Network

The Christian Revolt (long overdue)

Nicholas Landholt, host of The Christian Revolt on Friday afternoons, is on a mission to expose the Money Powers and their plans to enslave the People, and he wants to free the millions of Texians who mistakenly believe they are liable for the federal income tax.

A native Texian,* Nicholas spent over ten years in the Navy after obtaining a BS in Radio-Television-Film. Finally realizing that U.S. military forces are used by the Money Powers for their own personal gain, he resigned his commission in 1988, and dedicated his public life to exposing those powers. He is a strong advocate for restoring to We the People the lost political philosophy of self-governance under God's Laws. Landholt is also recruiting Christian patriots, regardless of political persuasion, to join his team to put an end to usury, and bring justice to

Show time
4 PM Eastern
Friday

* **Texians** were citizens of Anglo origin in Texas when Texas was part of Mexico, and subsequently when it was a sovereign nation, before Texas became a state.