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17.245 The Supreme Court, Civil Liberties, and Civil Rights
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Discussion 21: Immigration

Immigration issues raise questions of sovereignty and who is protected by the Constitution. The privileges and immunities clause of the 14th Amendment applies only to citizens, but the due process and equal protection clauses apply to any "person".

- An alien does have standing to challenge the executive's authority to detain him as an enemy combatant because the privilege of habeas corpus is not limited to citizens.
- The Congress has the right to suspend the privilege of habeas corpus under Article I in times of national emergency or insurrection.

The 14th Amendment was crafted with slavery in mind. The freed slaves were made citizens by the first section of the 14th Amendment, which overrules Dred Scott. Why then did the framers of the amendment distinguish between persons and citizens in its later clauses? Part of the answer might have involved an effort to prevent states from circumventing federal laws in order to target freed slaves. Is the status of immigrants implicated in this distinction?

Discussion of Chae Chan Ping v. US, 1889

A Chinese laborer who legally came to the US to work left for a period of time. While he was gone, the Congress invalidated the law allowing permits, which resulted in the US forcing Chae Chan Ping to stay on the boat in the San Francisco harbor. Chae Chan Ping obtains a writ of habeas corpus to allow him to challenge the holding. Chae Chan Ping argues that the treaty with China permitting immigrants to enter the US is the supreme law and Congress must enforce the provisions of the treaty. The court rules that a congressional statute passed after the treaty invalidated the part of the treaty granting Chae Chan Ping his right to immigrate/return.

The Court finds the statute was passed out of fear of the large influx of recent Chinese immigration, which is characterized in the decision as an invasion.

"In December, 1878, the convention which framed the present constitution of California, being in session, took this subject up, and memorialized congress upon it, setting forth, in substance, that the presence of Chinese laborers had a baneful effect upon the material interests of the state, and upon public morals; that their immigration was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization; that the discontent from this cause was not confined to any political party, or to any class or nationality, but was well nigh universal; that they retained the habits and customs of their own country, and in fact constituted a [130 U.S. 581, 596] Chinese settlement within the state, without any interest in our country or its institutions; and praying congress to take measures to prevent their further immigration." (Chae Chan Ping v. US)

The Court speaks directly to the legitimacy of regulating immigration, developing the "invasion" theme. It uses the metaphor of war, claiming that this is almost an exercise of the war powers in the name of security.

"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 in its national character, or from vast hordes of its people crowding in upon us. The government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determinations, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers. If, therefore, the government of the United States, through its legislative department, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects.” (Chae Chan Ping v. US)

The heart of the case is whether or not sovereignty entails the ability to exclude people from borders.

"As said by this court in the case of The Exchange, 7 Cranch, 116, 136, speaking by Chief Justice MARSHALL: 'The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.'

The Court rules that the federal government has full and unabridged authority to regulate immigration however it pleases and that Chae Chan Ping does not have a right to re-enter the US.

Discussion of Graham v. Richardson, 1971

This case challenged state statutes that deny welfare benefits to two classes of people:

- (i) Legal resident aliens in general.
- (ii) Legal resident aliens who have not resided in the US for a specified number of years.

The challenge is brought on equal protection grounds. The Court strikes down the statutes as a violation of equal protection.

The text of the 14th Amendment offers equal protection of the laws for all persons, and does not discriminate on the basis of citizenship. The state argues that it must preserve limited funds and has an interest in being able to provide benefits to its citizens before others. The Court says that preservation of limited funds is not a legitimate or compelling justification for denying equal protection to legal residents.

"Arizona and Pennsylvania seek to justify their restrictions on the eligibility of aliens for public assistance solely on the basis of a State's "special public interest" in favoring its own citizens over aliens in the distribution of limited resources such as welfare benefits. It is true that this Court on occasion has upheld state statutes that treat citizens and noncitizens differently, the ground for distinction having been that such laws were necessary to protect special interests of the State or its citizens.” (Blackmun, majority opinion in Graham v. Richardson, www.findlaw.com)

Furthermore, the Court elaborates on the tradition of immigration as a matter of quintessential federal jurisdiction and immune under the supremacy clause from state interference. Consequently, state classifications on the basis of immigration status (as determined by the federal government) do not further a legitimate interest of the state.

Discussion of Bernal v. Fainter, 1984

Plaintiff challenges a Texas law prohibiting a non-citizen from becoming a certified notary public. The court rules with the plaintiff, arguing that the state has no legitimate and compelling interest in creating a classification between citizens and non-citizens for the purposes of determining who may become a notary public.

Rationale:

- (1) The Court applies strict scrutiny to classifications on the basis of citizenship because of the potential for invidious discrimination against non-citizens.
- (2) The profession of notary public does not fall within the "political function" exception to anti-discrimination laws requiring equal opportunity to access professions.
- (3) Texas law does not meet strict scrutiny because it is not narrowly tailored to meet its legislative purpose.

The job of a notary public is to authenticate written documents, handle legal documents, administer oaths, and take out-of-court depositions. The state contends that this is an important function requiring knowledge of the law, therefore justifying the citizenship requirement.

Given the procedures required to become a notary public in Texas, the Court rules that the classification of non-citizen is not substantially related to the requisite requirements the state lays out for a qualified candidate.

Further, the Court says that a notary public does not fall under the political function exception. It says that the only professions that fall under this exception are those that exercise broad discretionary authority in the administration of republican government such as police officers, legislators, and teachers. It also cites the fact that the Secretary of State is not required to be a citizen.

Finally, to pass strict scrutiny, the state must prove the law furthers a compelling state interest using the least restrictive means necessary.

"There is nothing in the record that indicates that resident aliens, as a class, are so incapable of familiarizing themselves with Texas law as to justify the State's absolute and classwide exclusion. The possibility that some resident aliens are unsuitable for the position cannot justify a wholesale ban against all resident aliens. Furthermore, if the State's concern with ensuring a notary's familiarity with state law were truly "compelling," one would expect the State to give some sort of test actually measuring a person's familiarity with the law. The State, however, administers no such test. To become a notary public in Texas, one is merely required to fill out an application that lists one's name and address and that answers four questions pertaining to one's age, citizenship, residency, and criminal record [16](#) - nothing that reflects the State's asserted interest in ensuring that notaries are familiar with Texas law." (Marshall, majority opinion in Bernal v. Fainter, www.findlaw.com)