

Crossing Bridges

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Abstract:

In the following analysis, it will discuss on the Chinese Exclusion Act of 1882, barring all Chinese immigrants from entering into the United States for the past 80 years, and Executive Order 13769 that restricts seven Muslim countries such as, Libya, Iraq, Somalia, Sudan, Yemen, Iran and Syria. The Chinese Exclusion Act of 1882 and Executive Order 13769 are two acts that are similar in comparison. They both mainly focus on ostracizing a significant sect of people, for example Chinese were not permitted into the United States while the recent scare is from Muslim ethnicities. The core of this research will aim at the idea behind on how these Acts can be authorized towards specific race, ethnicity, and religion. The research will include elements of historical backgrounds and famous landmark cases. The reason why this study is being conducted is due to my curiosity of whether race, nationality, or even religion is the physical foundation of determining an individual's entrance in the United States, which metaphorically stands for melting-pot fusion of ethnicities, races, and religions from all over the world.

Introduction:

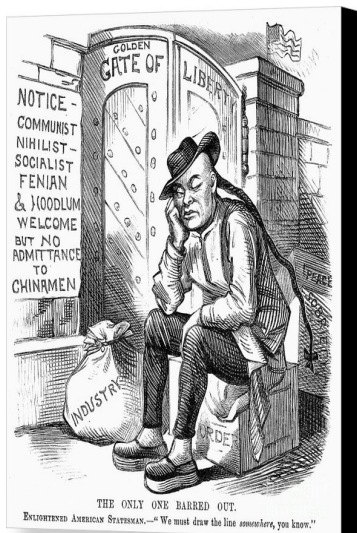
Over the history of the United States, race, ethnicity and religion have been surfaced as an issue. Starting from the early ages of chattel slavery that labeled many African American as savages by early scientists resulting in dehumanizing and segregating them from the society. Then to the terror of having new immigrants migrating into this county posing as a threat to the well being of American society.

Because of these continual ideologies of placing different ethnic groups, religions or races as a danger to the American Society caused to produce polices that prohibited certain groups out of the country. Among these Acts were the Chinese Exclusion Act of 1882 and the Executive Order 13769, also known as the Muslim ban, were both formulated under the framework of national security interest. Even though the Chinese Exclusion Act of 1882 and Executive Order 13769 were established as a means for national security interest they were both obtrusively discriminatory against Chinese and Muslim based identities.

Prior to looking at the Chinese Exclusion Act of 1882, United States had a level of attraction towards China by creating international relationship. This relationship was essentially for exploring the new country and building trading routes between two countries. As an outcome of this it generated the Burlingame Treaty of 1868, which was an agreement between China and United States allowing Chinese citizens to enjoy the same privileges as the United States citizens would in regards to each other countries. For example, it recognized basic and absolute rights of any person trying to change his home or allegiance. This admitted many Chinese and Americans for free migration and emigration from one country to another in the purpose of curiosity, trade, or permanent residency. By having this treaty actively working it influx the rate of Chinese immigrants into the United States in search for a better life. Many of the Chinese immigrants worked on the Central Pacific Railroad and mining industries in California that soon led to a hostile atmosphere for these immigrants. (See Figure 1.1, 1.2). The reason for the hostility was that many of the owners were hiring Chinese immigrants because of inexpensive labor that put out

many white immigrants out of work. Moreover, it introduced the fear of “Yellow Peril” that represented an invasion of lands and disorder of Western values such as prevalence in Christianity, democracy, and expansion in technology. In addition, this enforced numerous anti-Chinese immigration commissioners to reconsider the Burlingame Treaty of 1868 with China. As one of the scholarly article states, “In 1870, Congress refused to offer naturalization rights to the Chinese, thus eliminating the chances of these immigrants to lay down more permanent roots. The Chinese were officially counted in the census of 1870, not as a nationality but as a distinct race of people, which helped to more easily discipline them by marking them as more visible as well as unwanted” (Kil, 2012). This showed that by classifying Chinese immigrants as individuals who are perceived as a foreign race should not only be targeted, but also seen as specimens to mend. Below are political cartoons that illustrate American perception of Chinese.

Figure 1.1



“The Only Barred One”(1882, Time)

Figure 1.2



James Moy's Novel Marginal Sights: Staggin the Chinese in America

One of the most famous cases that challenged the Chinese Exclusion Act of 1882 was *Chae Chang Ping v. United States*. Mr. Ping, who was a Chinese laborer, had migrated into California because of the Gold Rush and Railroad Company in seeking for employment. His immigration was made viable due to the Burlingame Treaty of 1868 allowing him to move from China to United States in the hopes of receiving a better future financially. He had occupied the country for twelve years and decided to visit China with the contentment of returning back to America. Before leaving he had acquired a certificate for entrance, which he believed, would grant him to be permitted back into the United States. However, Congress enacted the Chinese Exclusion Act, which suspended the arrival of any Chinese immigrants back into the United States.

On behalf of Mr. Ping, Jaia Mon Tong filed a habeas corpus. It requested to the Supreme Court to check if the imprisonment was lawful or not by the captain on the steam-ship Belgic, which Mr. Ping was traveling on. In addition, when observing the constitution of the United States specifically looking at the suspension clause it speaks about protecting the liberty of the people by allowing them to file for a petition to be released. This is if they believe the governmental official is violating his or her rights. However, the government official can maintain the confinement of a person if he or she is a danger to the public safety. Another requirement for a proper procedure of habeas corpus is that "it is only by the authority of law manifested through the mandate of some court or judicial officer that one man can be held prisoner by another" (Chinese Exclusion case, No. 1445.581). This means that an officer who was not even eligible to hold Mr. Ping lawfully did so making it apparent that the Chinese Exclusion Act was discriminatory.

Furthermore, the arrest was a direct violation of Article 1 section 9 of the United States Constitution because there were no formal charges against Mr. Ping. It also deprived him the due process of the guaranteed in the Fifth Amendment. He was not correctly indicted by a police officer, and therefore his imprisonment was unlawful. Congress did not have the right to prohibit the return of Mr. ping since he had attained a certificated before leaving the country (Chinese Exclusion case, No. 1445.581).

Even though, there were many flaws according the Chinese Exclusion case the court upheld the right to ban foreigners on basis of non- reviewability by the Supreme Court when it is related to immigration law. This is an acute issue in the

legal system because without having any provisions from the judicial branch the political branches are left to do, as they will without any guidelines. The Supreme reaffirmed their decision by saying that “if there be any just ground of complaint on the part of China, it must be made to the political department of our government, which is alone to act upon the subject”(Feere, 2009). By having these methods in our system does not only negate the function of this country, which is checks and balances, but also defeats the definition of what judicial review is.

Judicial review first appeared in the famous case *Marbury v. Madison* where Chief Justice John Marshall says, “It is emphatically the province and duty of the judicial department to say what the law is”, and “The government of the United States is of the latter description. The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written”. Marshall emphasizes the integral role of the judiciary branch to check if both of the political branches do not exceed their ascribed powers.

When examining immigration law it is important to understand the building blocks of it and its association with the plenary power doctrine. The political branches of the government, which are legislative and executive, have the sole jurisdiction to regulate all immigration in respect to national sovereignty. Thus the supreme courts have upheld plenary power doctrine not only in the *Chinese Exclusion* case, but other cases revolving around immigration by justifying their lack of capacity to review. The supreme justices, or judges, believe that immigration is entirely created from political branches that invalidate judicial judgment because

they don't have the required knowledge to direct the matter without the help of a politic branch.

By having this idea still in mind one can argue that this does give a free pass to political branches to develop statutes that are discriminatory towards people of different race, religion, nationality, but also work legally hindering the actual duty of the United States judicial system. In fact, when reading the United States Constitution also known as the supreme law of land it does not explicitly declare immigration anywhere, but rather speaks about naturalization in the Fourteenth Amendment, "All persons born or naturalized in the United States...nor shall any State deprive any person of life, liberty, or property, without due process of law". The Chinese Act of 1882 deprived many folks of their life, liberty, property for example Mr. Ping had come into the United States in pursuit of happiness and being a resident for the past twelve years. He had manufactured some amount of property with his hard earned money through intense labor. By simply processing a prejudices Act is not only unfair and cruel, but stole life, liberty and property from him.

Congress and executive authorities develop laws that imply a response to a national security interest, but are those responses made for an actual threat? Alternatively, it's discrimination toward people of different origins. In the Western Reserve law Review it says, "Borrowing Justice Robert H. Jackson's words in his dissent in Korematsu, immigration and national security exeptionalism each lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle

more deeply in our law and thinking and expands it to new purposes” (Chang, 2018). In context of this quote the loaded weapon is in the hands of the political branch willing to enact any legislations that are mandatory to preserve the nationalistic environment of the society that is having only natural born citizen in the United States instead of having a flow of immigrants from other countries. This is not only racist, but it empowers the political branches to adjust the demographic of a specific population coming to the United States.

Even more, when excluding people from a specific location in terms with immigration law it is not considered a punishment just because the “alien” is being denied entry or is demanded to return to his or her homeland, so this necessarily isn’t a burden on the person’s constitutional rights. These analogies are certainly used today with president Donald Trump’s recent order known as the Muslim ban. It prohibited and listed seven most prominent countries that practice Islam to entry into the United States because those countries have a higher threat to the national security.

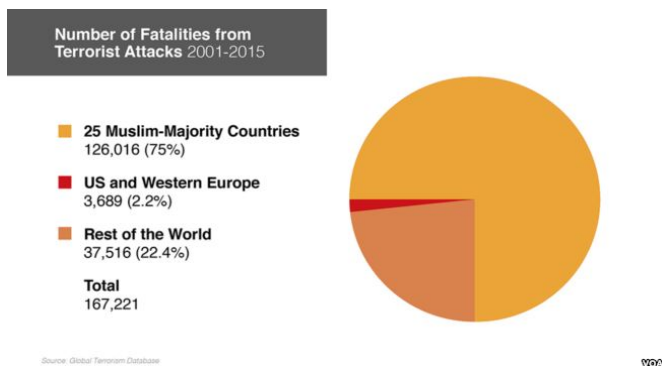
If a person were to study the root of the Executive Order 13769, they could begin with President Trump’s nationalist agencies when he was running for presidency. With the phrases of “making America great again” to saying he is a “nationalist”. These terms are persistently during his campaign to remind the people of the United States that he is valuing this country’s interest above any other countries even if he has to ban specific races, religions, or ethnicities.

Further, viewing Executive order 13769, it states in section 5B “The Secretary of State, in consultation with the secretary of Homeland Security, is further directed to

make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality" (EO 13679). The word "Prioritize" highlights a particular religion that is not preeminent practicing religion within the country than it is acceptable for that refugee to arrive in the country. On the contrary, looking at the statistics of those countries, the majority of people there are Muslim. So if radical Muslims are attacking non-extremist Muslims as well they cannot escape the torture due to their religious background. This policy is a bluntly racist towards the Muslim people because of their mere association with Islam.

In fact, it is important to realize that extremist Muslims have bombarded Muslim countries more compared to any other countries (Pearson, 2017) (Figure 1.3). Many Muslim's are viewed as terrorists in American society. This perception of having foreigners as a threat to nativism of this country is a familiar image seen throughout history.

Figure 1.3



Another way president Donald Trump's Order can be seen through a different lens is the very racist reasoning used back in Antebellum South that is the idea of Paternalism. Referring to Josh Cole article in *Historia* Volume 15, "Genovese describes slavery as a paternalist system that saved black from extermination" (Cole, 2005). This argument can be mentioned for the Muslim ban because by having a policy that protects the nation from terrorist threats from people of different countries who are mainly Muslims is viewed as saving the United States "nationalist" representation, even if it is highly discriminatory.

And, that is immigrants from different countries are unable to assimilate to the American culture making it a key component of appointing the Chinese Exclusion Act of 1882 and the Executive Order 13769. As stated, in the scholarly article, "In case of the Chinese, they were seen as unable to assimilate because they clung to old native customs and they were seen as a detriment to national progress"(Kil, 2012). President Donald trump's opinions were portrayed visibly over and over again during his election campaigns about how Muslims cannot assimilation into the American society has never been a "positive factor".

Many of the Americans have this stereotype of "all" Muslims are practicing radical Islam. This fear of Muslims being personally linked to terrorism has been sparked more after the 9/11 incident that killed many innocent Americans in, which some were Muslims as well. However, the bigger picture to keep in mind is that not "all" Muslims are extremists. Numbers of Muslim come from different backgrounds, cultures and countries that have a low tolerance of extremism themselves, and a very tiny minority of groups participates in extremist activities. (Young, 2017).

Especially when reading Muslim's holy book, the Quran it mentions that to kill a human being is like killing all humanity. It is a violation of Islamic teachings to perform any immoral actions against innocent people, the word Islam in Arabic means peace. Again, Trump expresses his views about Muslims when shares an anti-Muslim video on his twitter account. In the New York Times article, *Trump shares Inflammatory Anti-Muslim Videos, and Britain's Leader Condemns Them* speaks of a Muslim migrant beating up a Dutch Boy on crutches showing Muslims as violent. In reality, both of the boys in the video streaming on Donald Trump's Twitter account were Dutch, and the sixteen-year-old boy who was arrested after the video released was actually "born and raised in the Netherlands" (Baker & Sullivan, 2017). The president articulated his anti-Muslim beliefs toward the religion instead of the terrorism itself. It became a widespread dilemma that pervious presidents had never spoken about war against a specific religion, which in this situation is Islam, but preferably war on terrorism. (Baker & Sullivan, 2017). President Trump did not only make offensive remarks, but also without having accurate information about the anonymous boy's background he decides to identify him still as a "Muslim migrant".

Considering that President Donald trump's attitude about immigrants, migrants or Muslims in general Executive order 13769 states in section 5D, "I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interest of the United States..."(EO 13679). This means that the refugee cap is 110,00 lower than the Obama administration. The decrease of refugee acceptance can be combined with the increasing tuitions for college students from

the loss of international students attending American colleges and universities. Not only that, but it lowers the chances of tourism prospering in the country that can bring tons of financial growth for the country. (Young, 2017).

In a Michigan Journal of Race and Law, the author describes that President Donald Trump intentionally did not announce the ban because “in a Tweet on January 30th he stated if the ban were announced with one week notice, the “bad” would rush into our country during that week. A lot of bad “dudes” out there!” (Beydoun, 2017). Again, it can be discussed that EO 13769, is intentionally created to punish immigrants solely based on their identity of being part of a different race, religion, or ethnicity yet the Supreme Court still doesn’t recognize deportation or exclusion as malice.

To challenge the Supreme Court positions on political branches of the government having the upmost role in immigration laws and maintaining the condition of national security. An argument of customary international law is vital to immigration. That is immigration law cannot be qualified unless the customary international law is fulfilled. “Every nation is bound by custom unless it specifically dissents during the development of custom” (Kai, 2018). Meaning the base of customary international law works on “Jus cogens” that basically stands for principles as in regulations to be followed by. These commandments are “mandatory” and “non-derogable” which can only ever be mutated by general international norms of equivalent authority. (Kai, 2018). Among these commandments are seven human rights such as forbiddance of genocide, slavery,

murder, or causing disappearance of individuals, torture or degrading treatment, and systematic racial discrimination.

By having customary laws accompanied by immigration laws signifies that the Executive Order 13769 and the Chinese Exclusion Act of 1882 are both discriminatory because every country including the United States of America is obligated to follow the regulations set by customary laws, specifically looking at refusal of systematic racial discrimination. Donald Trump's Order is not only infringing international customary laws, but these requirements can only be altered by people of authoritative status for international law.

An evidence of this is displayed in the law review, for example a Sudanese woman's experience traveling back to the United States who is a graduate of Stanford University later becomes a detainee in New York City's JFK airport. In her statement she said, "I think this order is a reflection of a larger trend in this country to criminalize Black people, to criminalize immigrants, to criminalize Muslims. And as a Black Muslim immigrant, I'm really concerned by this, you know, I think they're going to be treated differently, frankly" (Beydoun, 2017).

The color of a person's skin tone has many connotations attached to it. For instance, if a person is of a darker toned complexion, he is automatically a felon, and if lighter/whiter complexion the person indicates virtue and trust. It can be supported by reading Michelle Alexander's novel *The New Jim Crow Mass Incarceration in the Age of Colorblindness*, she says, "The temptation is to insist that black men "choose" to be criminals; the system does not make them criminals, at least not in the way that slavery made blacks slaves, or Jim Crow made them second-

class citizens...African Americans are not significantly more likely to use or sell prohibited drugs than whites, but they are made criminals at drastically higher rates for precisely the same conduct” (Alexander,2010). These concepts have been projected throughout the American history of having blacks as slaves due to them being inferior to whites. These can also be related to the anti- miscegenation laws, which made it illegal for whites and blacks to intermarry that leads to higher percentage of imprisonments.

Another, key point discussed in the article was “Poverty is especially pronounced among Black and Arab Muslim communities, with 44% and 37%, respectively of members in these communities earning household incomes of less than \$30,000 per year”(Beydoun, 2017, P237). By having the Muslim ban intact, many of these American Muslims will be suffering from finding solutions on how to pay for the attorney’s fees that can amount out to be thousands of dollars. This makes it tougher for families that already living trying to make the ends meet on monthly basis burdens the individual by violating his or her liberty, life and happiness. Losing a sense of hope in the American system of justices for all, regardless of race, nationality, religion, identity.

At the same time, the Muslim ban has sparked heated debates about all the academic disadvantages that scholars, scientists and researchers will undergo. The lack of having knowledge from other countries is curtailing ones sources. This is seen in the article when it says, “Political solutions will never arise from scientist and scholars- on whom the world depends critically for solutions to its urgent problems- breaking ties with one another. Science, especially medical science,

knows no borders and cannot advance effectively without the free international exchange of knowledge, ideas and skills among all its participants” (Stanbrook, 2017). This is not only a slap on the established institution of science and research, but it already conflicts with the concurrent downfalls of the federal government shortening the funding for academic purposes. By carrying these habits of not donating more money towards increase of knowledge it threatens the future of America, and also having tremendous feedback from other scientists in different countries that can provide unknown cures for diseases that need to be addressed. Besides, this when the country starts limiting its resources due a fake national threat, it harms the prosperity depriving its ability to access new information and growth in education.

On the other hand, along with many perks of having scientist from all over the world does not only benefit the country, but scientist themselves in acquiring techniques learned from other scientist helping them in the long run. By improving their skills starts a movement of spreading the educating those who have not learned the skills yet. This can only be a positive attribute because by have more facilities that can preform the procedure speeds up the process of caring to every diagnosed patients needs and treating them efficiently. So, tie in the arguments with Donald Trump’s Executive Order 13769 it is discriminatory to prohibit the expansion educational in the United States just because people from another country are endangering a false imitation of national security reasons.

In the case Trump v. Hawaii, where the appellant state of Hawaii challenged that the Executive order 13769 violates the Immigration and Nationality Act and the

establishment clause. The state argues that according to the establishment clause in the constitution also known as the First Amendment explains, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievance". That it purely aims at Muslims under the simulation of national security interest. In spite of having the First Amendment as protection for every person born or naturalized, the Supreme Court justice's still repeated the same opinion that was written in Chinese Exclusion case. Justice Kennedy in his concurring opinion said, "In all events, it is appropriate to make this further observation. There are numerous instances in which the statements and actions of Government officials are not subject to judicial scrutiny or intervention". The absence of having the courts to review the cases regarding immigration protects the political branches to move freely as they will without any interference from Judiciary branch. This means that judicial system is granting political branches to do what they want resonating the most clichéd phrase "justice is blind" literally. Therefore, letting political branches run around without any format since it is not under their powers.

Conclusion:

While having Executive Order 13769, that is actively shaping immigration laws and relying heavily on Chinese Exclusion case as a precedent. Lays out an

unconstitutional and evidently discriminatory behavior towards people of different race, religion, and ethnicity in which there is a never-ending loophole. That is the judicial system cannot review the accountability of a case involving immigration because of the plenary doctrine powers handed to the political branches. This makes it difficult for many immigrants whose only hopes are their trusts in the justice system, and helping to maintain their green cards, or valid visa status before they are booted out of the United States.

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