AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 7: The Republican Era – Powers of the National Government/Immigration and Naturalization

**Chae Chan Ping v. United States [Chinese Exclusion Case], 130 U.S, 581 (1889)**

*The Burlingame Treaty of 1868 opened trade and immigration between the United States and China. The subsequent wave of Chinese immigration into California soon provoked an anti-immigrant backlash that roiled politics on the West Coast and eventually in the national government. The anti-Chinese fervor culminated in the passage of the Chinese Exclusion Acts of 1882. The draconian law was the first substantial national restriction on immigration in American history. In the Chinese Exclusion Case, the Supreme Court affirmed the power of Congress to prohibit classes of immigrants from entering the United States.*

*Chae Chan Ping was a Chinese national who had come to the United States to work under the terms of the Burlingame Treaty and resided in San Francisco from 1875 to 1887. In the summer of 1887, he made a trip home to China with a certificate from the customs collector in San Francisco entitling him to return. When he arrived back at the port on October 8, 1888, he was denied entry and detained on the steamship on which he had arrived. On October 1, 1888, Congress had adopted an amendment to the Chinese Exclusion Acts that prohibited any Chinese laborers resident in the United States from reentering the country if they were to leave. Chae Chan Ping petitioned for a writ of habeas corpus from the federal circuit court on the grounds that his detention was unlawful, but he was refused. On appeal, the U.S. Supreme Court unanimously affirmed the ruling of the lower court, holding that Congress had plenary authority to exclude any alien from the country.*

JUSTICE FIELD delivered the opinion of the Court.

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. . . . It must be conceded that the act of 1888 is in contravention of express stipulations of the treaty of 1868, and of the supplemental treaty of 1880, but it is not on that account invalid, or to be restricted in its enforcement. The treaties were of no greater legal obligation than the act of congress. By the constitution, laws made in pursuance thereof, and treaties made under the authority of the United States, are both declared to be the supreme law of the land, and no paramount authority is given to one over the other. A treaty, it is true, is in its nature a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of congress. In either case the last expression of the sovereign will must control.

The effect of legislation upon conflicting treaty stipulations was elaborately considered in the *Head-Money Cases* (1884), and it was there adjudged “that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as congress may pass for its enforcement, modification, or repeal.” . . . It will not be presumed that the legislative department of the government will lightly pass laws which are in conflict with the treaties of the country; but that circumstances may arise which would not only justify the government in disregarding their stipulations, but demand in the interests of the country that it should do so, there can be no question. Unexpected events may call for a change in the policy of the country. Neglect or violation of stipulations on the part of the other contracting party may require corresponding action on our part. When a reciprocal engagement is not carried out by one of the contracting parties, the other may also decline to keep the corresponding engagement. . . .

. . . . The question whether our government is justified in disregarding its engagements with another nation is not one for the determination of the courts. . . . And we may add, to the concluding observation of the learned justice, that, if the power mentioned is vested in congress, any reflection upon its motives, or the motives of any of its members in exercising it, would be entirely uncalled for. This court is not a censor of the morals of other departments of the government; it is not invested with any authority to pass judgment upon the motives of their conduct. When once it is established that congress possesses the power to pass an act, our province ends with its construction and its application to cases as they are presented for determination. . . . We do not mean to intimate that the moral aspects of legislative acts may not be proper subjects of consideration. Undoubtedly they may be, at proper times and places, before the public, in the halls of congress, and in all the modes by which the public mind can be influenced. Public opinion thus enlightened, brought to bear upon legislation, will do more than all other causes to prevent abuses; but the province of the courts is to pass upon the validity of laws, not to make them, and, when their validity is established, to declare their meaning and apply their provisions. All else lies beyond their domain.

There being nothing in the treaties between China and the United States to impair the validity of the act of congress of October 1, 1888, was it on any other ground beyond the competency of congress to pass it? If so, it must be because it was not within the power of congress to prohibit Chinese laborers who had at the time departed from the United States, or should subsequently depart, from returning to the United States. Those laborers are not citizens of the United States; they are aliens. That the government of the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power. As said by this court in the case of *The Schooner Exchange v. McFaddon* (1812), 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.”

While under our constitution and form of government the great mass of local matters is controlled by local authorities, the United States, in their relation to foreign countries and their subjects or citizens, are one nation, invested with powers which belong to independent nations, the exercise of which can be invoked for the maintenance of its absolute independence and security throughout its entire territory. The powers to declare war, make treaties, suppress insurrection, repel invasion, regulate foreign commerce, secure republican governments to the states, and admit subjects of other nations to citizenship, are all sovereign powers, restricted in their exercise only by the constitution itself and considerations of public policy and justice which control, more or less, the conduct of all civilized nations. As said by this court in the case of *Cohens v. Virginia* (1821), speaking by the same great chief justice:

“That the United States form, for many, and for most important purposes, a single nation, has not yet been denied. In war, we are one people. In making peace, we are one people. In all commercial regulations, we are one and the same people. In many other respects, the American people are one; and the government which is alone capable of controlling and managing their interests in all these respects is the government of the Union. It is their government, and in that character they have no other. America has chosen to be in many respects, and to many purposes, a nation; and for all these purposes her government is complete; to all these objects, it is competent. The people have declared that in the exercise of all powers given for these objects it is supreme. It can, then, in effecting these objects, legitimately control all individuals or governments within the American territory. The constitution and laws of a state, so far as they are repugnant to the constitution and laws of the United States, are absolutely void. These states are constituent parts of the United States. They are members of one great empire,—for some purposes sovereign, for some purposes subordinate.”

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The control of local matters being left to local authorities, and national matters being entrusted to the government of the Union, the problem of free institutions existing over a widely extended country, having different climates and varied interests, has been happily solved. For local interests the several states of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power. 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. The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity, in a less pressing degree, may arise when war does not exist, and the same authority which adjudges the necessity in one case must also determine it in the other. In both cases its determination is conclusive upon the judiciary. If the government of the country of which the foreigners excluded are subjects is dissatisfied with this action, it can make complaint to the executive head of our government, or resort to any other measure which, in its judgment, its interests or dignity may demand; and there lies its only remedy.

The power of the government to exclude foreigners from the country whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances, and never denied by the executive or legislative departments. . . .

The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract. Whatever license, therefore, Chinese laborers may have obtained, previous to the act of October 1, 1888, to return to the United States after their departure, is held at the will of the government, revocable at any time, at its pleasure. Whether a proper consideration by our government of its previous laws, or a proper respect for the nation whose subjects are affected by its action, ought to have qualified its inhibition, and made it applicable only to persons departing from the country after the passage of the act, are not questions for judicial determination. 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 competent to act upon the subject. . . . .The passage cited by counsel from the language of Justice Washington in *Society v. New Haven* (1823), also illustrates this doctrine. There the learned justice observes that, “if real estate be purchased or secured under a treaty, it would be most mischievous to admit that the extinguishment of the treaty extinguished the right to such estate. In truth, it no more affects such rights than the repeal of a municipal law affects rights acquired under it.” Of this doctrine there can be no question in this court; but far different is this case, where a continued suspension of the exercise of a governmental power is insisted upon as a right, because, by the favor and consent of the government, it has not heretofore been exerted with respect to the appellant or to the class to which he belongs. Between property rights not affected by the termination or abrogation of a treaty, and expectations of benefits from the continuance of existing legislation, there is as wide a difference as between realization and hopes.

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*Affirmed*.