

Resolving Immigration

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November 14th, 2015

I chose the title of this essay specifically to include the word *resolving*. Under one sense of the word, what we will do today is to solve the issue of immigration again – we will re–solve it. Within another sense of the word, what we will do today is to take the bright white light being shone on the issue of immigration and resolve it into its different elements just like a white light passing through a prism is “resolved” into different colors of the spectrum.

My premise is that the issue of immigration – as presented to us by the media and candidates for office – is as the white light. It seems clear and in focus, but when seen through the dual prisms of logic and the authorities granted to the Federal Government by the Constitution, the whiteness of the light can be seen to mask the truth – the colors.

Let’s start with the word immigration itself. According to the Oxford Dictionary, immigration means: *The action of coming to live permanently in a foreign country.* It is a noun. As such, it can be qualified by adjectives. Common adjectives being tossed around recently are *legal, illegal, and undocumented.*

It is noteworthy that the definition of the word *immigration* includes another adjective: *permanently.*

Continuing to collect our facts, let us now look at the Constitution.

Article I, Section 8, which itemizes the powers that the states have delegated to Congress, is as follows: “The Congress shall have Power ...; To establish an uniform Rule of Naturalization ...;”

The last lines in Section 8 are: [The Congress shall have Power]; “To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

The word of interest, *immigration*, does occur in another section but only to acknowledge the right of states to decide who is admitted to each individual state between the adoption of the Constitution and the year 1808.

The colors are starting to break out.

Congress has the right and ability to enforce laws dealing with Naturalization. Referring back to the Oxford Dictionary, *naturalization* means: “The admittance of a foreigner to the citizenship of a country.”

The subject noun is *foreigner*. That would make sense. The verb *admittance* takes an object noun *citizenship*. The admittance under the definition is, therefore, not the physical location of a person; the verb refers to the foreigner obtaining status as a citizen.

What the Constitution leaves out are all of the other issues that we find rambling around in the media. There is no mention of *temporary* and *physical* admittance. There is no mention of the *removal* of those who are physically in the United States without proper authorization. In fact, there is no mention of from whom such an authorization should come.

The only authority granted to Congress is that of creating and enforcing a process through which foreigners may become citizens.

The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The light spectrum becomes more fully resolved.

The *only* authority granted to Congress is to create and enforce a process of permanent acceptance to citizenship; all other actions are reserved to individual states.

If we add one more thought, the white light will be fully diffracted: Specifically, the Constitution cannot be altered by the passage of a law. Powers granted under Section 8 cannot be expanded nor abandoned by an act of Congress.

To summarize, Congress must define and enforce the process of becoming a citizen: nothing more and nothing less.

If we now shine our new light on some of the issues, things become clear.

First there is the issue of whether or not individual states have the right and responsibility to detain people who are within the borders of that state without proper authorization. The answer is now clear. If the Federal powers are limited to defining and enforcing the process of becoming a citizen and all other powers (10th amendment) are reserved to the state, then the situation is completely reversed. In fact, it is the Federal government that has no right or responsibility to arrest a foreign national on US soil unless that person is engaged in some other illicit activity (such as spying).

With that power now in the proper hands, we can examine more complicated situations and ask what to do about the quandary created by so-called *anchor babies*.

For clarity, an anchor baby is a child born in the United States and deemed to be a US Citizen by virtue of the place of its birth. Can Washington make such a declaration? Using our new source of light, the answer is clearly yes. Because the Federal government is charged with defining the process of obtaining citizenship, if Congress decides that being born here is sufficient, then it is sufficient. It is sufficient, not by virtue of being right, but by virtue of the powers vested in Congress by the Constitution. The reader ought to take note at this juncture that the power under discussion was delegated to Congress, not to the Administration or the court.

And so our quandary is now better defined. Congress can assert that the baby is a US citizen, but Congress has not yet declared that the parents of an anchor baby are also citizens. Since the state is the only entity with the authority to detain a foreign national and the state is the only entity to decide whether to admit a foreign national to its territory, then the resolution of the conundrum falls to the state. There are two options. The state can assert that the natural right of a parent to parent his or her child coupled with the natural right of a child to be parented by his or her biological parents is in fact inalienable. With that assertion, the state could then allow the parent to stay or remove both the parent and the child.

It is likely that people will reject this thought because the child is considered a US citizen.

While it is true that the child may be a citizen, there is no requirement that a citizen actually live within the borders of the United States. The child, being a minor, can be removed along with the parents because of the assertion that the natural right to a parent-child relationship supersedes rights of a minor to determine where he or she lives. Upon the age of maturity, such a child as this – an anchor baby with citizenship living in a foreign land – may move to the United States without restriction; as an adult, the citizen can make his or her own choice.

Consider now the case of the person who arrives in the United States without authorization and brings a baby or small child along. The parent has certainly committed a crime because authorization is still required to immigrate, even if that authorization ought to come from the state, not the federal government. Consider the analogy of a man, a citizen living in the US, who goes to rob a bank. He brings his 2 year old son with him. The man is a criminal. The son is not. If anything, the son is a victim.

Continuing our analogy, consider the situation should the man get away with his crime until the son is 21. The man gets caught. Is the son responsible for restitution because his care was paid for by the money stolen from the bank? Hardly.

In the situation where a man comes to the United States and brings a child, the child did nothing wrong. The child may have grown up thinking he was an American citizen. The child, even as an adult, is the victim of the parent's crime. With that understanding, the solution becomes simple. Arrest the parent and punish him accordingly, just as if he had robbed the bank. Give the now adult child of the criminal immigrant the choice to become a citizen or to leave. Some might call this amnesty, but if the child was never a criminal, how can it be? You cannot forgive a crime that never occurred. With the understanding that citizenship is a state of mind in which one espouses the ideals and freedoms of this thing we call America, this solution – this resolution – makes perfect sense.

When considering this option, remember that the process defined by Congress is one in which the applicant proves that he understands what he is getting into with becoming a citizen. A person raised in the US as a citizen already knows that.

These two perspectives resolve several issues. States can and should enact and enforce laws regarding who is allowed to enter and who is not. Child victims cannot be held responsible for the crimes of their parents. Anchor babies will eventually receive the same choice – or Congress can change the process.

But does the resolution create other problems?

Consider, for example, what might happen if California decided to allow people to enter her borders on a temporary basis. We've established that under the 10th Amendment that California has that power - but would the other states be required to acknowledge her decision? Would that non-citizen, temporary visitor to California be able to enter Nevada?

A neighboring state would be required to acknowledge California's decision under Article IV, Section 1 which states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

But the requirement stops there. Clearly Nevada has the same power as California, so Nevada may choose to exclude people whom California welcomed.

Free movement within the United States is not a natural right – it is a right of citizenship.

Still, a strict reading would create havoc with the issuance of Visas – whether they be for travel, work, or study. The Federal government has absolutely no authority to issue or deny visas but it is not unimaginable that the states could adopt certain reciprocity laws to deal with the situation. There are already reciprocity laws for everything from driving a car to practicing law. There is no reason that reciprocity could not be adopted for foreign visitors.

Oddly, advantages arise. For example, a foreign national arriving in Boston on a Massachusetts issued student visa might not be able to move to Indiana, but could visit Indiana on a tourist visa. The massive problem of people ignoring the limitations of their visas may well be reduced or even eliminated.

The principle benefit of actually enacting the laws as the Constitution had prescribed is the diffusion of power away from Washington – also as the Constitution had intended. Secondary benefits arise from the increased responsiveness of local government and the ability of the local authority to act and not be impeded by a federal bureaucracy.

The Gordian Knot of the issue of *immigration* is easily seen to be one constructed by an attitude in both Congress and the people of putting expediency over constitutional conformity; laws that violate the Constitution, the failure of the court to protect the Constitution, the inappropriate aggregation of power into an unresponsive and domineering agency, and the failure of the people to elect responsible legislators who can correct the situation. Even if the correction is to amend the Constitution, such a move would serve to maintain the position of that document as the first and supreme law – a law resistant to the whim and incompetence of Congress.