Blunders of the Supreme Court of the United States

Part 6

This work is the sixth in a series of articles the author has written on blunders made by the Supreme Court of the United States. Originally, he decided to write on only two mistakes made by the Supreme Court of the United States. However, the author reconsidered after writing about the third blunder of the Supreme Court of the United States, to not place any limit on the number of blunders he finds with the Supreme Court of the United States.

The sixth blunder of the Supreme Court of the United States is in the case of *Chirac v. Lessee of A. F. Chirac et. al* (15 U.S. (Wheat. 2) 259, 1817). The blunder occurs at page 269, wherein, the Chief Justice, John Marshall writes:

". . . [T]he power of naturalization is exclusively in Congress." Chirac v. Lessee of A. F. Chirac et. al: 15 U.S. (Wheat. 2) 259, at 269 (1817). **[Footnote 1]**

http://books.google.com/books?id=920DAAAAQAAJ&pg=PA269#v=onepage&q&f=false

The blunder made is that Congress, according to the Supreme Court of the United States, has been given the power of naturalization under the Constitution. However, the Constitution of the United States of America only gives to Congress the power to prescribe the rule of naturalization for the several States. That is, to provide the criteria for one to become a citizen of a State, in any State of the Union. **[Footnote 2]**

The power given by the Constitution to Congress to prescribe the rule of naturalization for the several States is at Article I, Section 8, Clause 4 of the Constitution. Referring to this provision, Alexander Hamilton wrote in Federalist Paper #32:

"An entire consolidation of the States into one complete national sovereignty would imply an entire subordination of the parts; and whatever powers might remain in them, would be altogether dependent on the general will. But as the plan

of the convention aims only at a partial union or consolidation, the State governments would clearly retain all the rights of sovereignty which they before had, and which were not, by that act, EXCLUSIVELY delegated to the United States. This exclusive delegation, or rather this alienation, of State sovereignty, would only exist in three cases: where the Constitution in express terms granted an exclusive authority to the Union; where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally CONTRADICTORY and REPUGNANT. I use these terms to distinguish this last case from another which might appear to resemble it, but which would, in fact, be essentially different; I mean where the exercise of a concurrent jurisdiction might be productive of occasional interferences in the POLICY of any branch of administration, but would not imply any direct contradiction or repugnancy in point of constitutional authority. These three cases of exclusive jurisdiction in the federal government may be exemplified by the following instances: The last clause but one in the eighth section of the first article provides expressly that Congress shall exercise "EXCLUSIVE LEGISLATION" over the district to be appropriated as the seat of government. This answers to the first case. The first clause of the same section empowers Congress "TO LAY AND COLLECT TAXES, DUTIES, IMPOSTS AND EXCISES"; and the second clause of the tenth section of the same article declares that, "NO STATE SHALL, without the consent of Congress, LAY ANY IMPOSTS OR DUTIES ON IMPORTS OR EXPORTS, except for the purpose of executing its inspection laws." Hence would result an exclusive power in the Union to lay duties on imports and exports, with the particular exception mentioned; but this power is abridged by another clause, which declares that no tax or duty shall be laid on articles exported from any State; in consequence of which qualification, it now only extends to the DUTIES ON IMPORTS. This answers to the second case. ***The third will be found in that clause which declares that Congress shall have power "to establish an UNIFORM RULE of naturalization throughout the United States." This must necessarily be exclusive; because if each State had power to prescribe a DISTINCT RULE, there could not be a UNIFORM RULE.***"

http://www.foundingfathers.info/federalistpapers/fed32.htm

Article I, Section 8, Clause 4 of the Constitution, therefore, only grants to Congress the power to prescribe a uniform rule of naturalization for the several States, it does not give Congress the power of naturalization. The power of naturalization remains with the several States:

"*Mr. Govr. Morris*: was for making the clause read at once, 'importation of slaves into N. Carolina, S. Carolina & Georgia shall not be prohibited &c.' ***This he said***

would be most fair and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the States might be defeated. He wished it to be known also that this part of the Constitution was a compliance with those States. If the change of language however should be objected to by the members from those States, he should not urge it." Mr. Governor Morris, **August 25, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison. **[Footnote 3]**

http://teachingamericanhistory.org/convention/debates/0825.html

In addition, the rule of naturalization relates to only residency:

"*Col. Hamilton*: was in general against embarrassing the Govt. with minute restrictions. There was on one side the possible danger that had been suggested. On the other side, the advantage of encouraging foreigners was obvious & admitted. Persons in Europe of moderate fortunes will be fond of coming here where they will be on a level with the first Citizens. ***He moved that the section be so altered as to require merely citizenship & inhabitancy. The right of determining the rule of naturalization will then leave a discretion to the Legislature [of the United States] on this subject which will answer every purpose***." Col. Hamilton, **August 13, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison. **[Footnote 4]**

http://teachingamericanhistory.org/convention/debates/0813.html

And:

"*Mr. Madision*: was not averse to some restrictions on this subject; but could never agree to the proposed amendment. He thought any restriction however in the Constitution unnecessary, and improper. unnecessary; because ***the Natl. Legislre. is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence as conditions of enjoying different privileges of Citizenship***." Col. Hamilton, **August 9, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison. **[Footnote 5]**

http://teachingamericanhistory.org/convention/debates/0809.html

Also:

"***The dissimilarity in the rules of naturalization has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions. . . . In one State, residence for a short term confirms 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. We owe it to mere casualty, that very serious embarrassments on this subject have been hitherto escaped. By the laws of several States, certain descriptions of aliens, who had rendered themselves obnoxious, were laid under interdicts inconsistent not only with the rights of citizenship but with the privilege of residence. What would have been the consequence, if such persons, 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? Whatever the legal consequences might have been, other consequences would probably have resulted, of too serious a nature not to be provided against. The new Constitution has accordingly, with great propriety, made provision against them, and all others proceeding from the defect of the Confederation on this head, by authorizing the general government to establish a uniform rule of naturalization throughout the United States." Federalist Paper #42.

http://www.foundingfathers.info/federalistpapers/fed42.htm

Therefore, under the Constitution, Congress is given the power to prescribe a uniform rule of naturalization for the several States. Such a rule relates to residency within a State of the Union.

Thus, Congress was not given the power of naturalization.

Footnotes:

1. This is the second case of the Supreme Court of the United States which involved an opinion issued by the distinguished John Marshall. As stated in my work, "Blunders of the Supreme Court of the United States: Part 2", "It is unfortunate he made a mistake, since his character and reputation was that he was honest man. He would not be happy with himself making a mistake, since he valued the truth highly. With that said."

2. From *Federalist Paper #41* and *Federalist Paper #42*:

Federalist Paper #41

"THE Constitution proposed by the convention may be considered under two general points of view. The FIRST relates to the sum or quantity of power which it

vests in the government, including the restraints imposed on the States. The SECOND, to the particular structure of the government, and the distribution of this power among its several branches.

Under the FIRST view of the subject, two important questions arise: 1. Whether any part of the powers transferred to the general government be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several States? . . . .

That we may form a correct judgment on this subject, it will be proper to review the several powers conferred on the government of the Union; and that this may be the more conveniently done they may be reduced into different classes as they relate to the following different objects: 1. Security against foreign danger; 2. Regulation of the intercourse with foreign nations; 3. Maintenance of harmony and proper intercourse among the States; 4. Certain miscellaneous objects of general utility; 5. Restraint of the States from certain injurious acts; 6. Provisions for giving due efficacy to all these powers."

http://www.foundingfathers.info/federalistpapers/fed41.htm

Federalist Paper #42

"The powers included in the THIRD class are those which provide for the harmony and proper intercourse among the States.

Under this head might be included the particular restraints imposed on the authority of the States, and certain powers of the judicial department; but the former are reserved for a distinct class, and the latter will be particularly examined when we arrive at the structure and organization of the government. I shall confine myself to a cursory review of the remaining powers comprehended under this third description, to wit: to regulate commerce among the several States and the Indian tribes; to coin money, regulate the value thereof, and of foreign coin; to provide for the punishment of counterfeiting the current coin and securities of the United States; to fix the standard of weights and measures; ***to establish a uniform rule of naturalization***, and uniform laws of bankruptcy, to prescribe the manner in which the public acts, records, and judicial proceedings of each State shall be proved, and the effect they shall have in other States; and to establish post offices and post roads."

http://www.foundingfathers.info/federalistpapers/fed42.htm

3. The provision Mr. Govr. Morris was referring to:

"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 1800, but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on imports." **August 24, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison.

http://teachingamericanhistory.org/convention/debates/0824.html

Also, there is the following:

"VII

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

To establish an uniform rule of naturalization throughout the United States." **August 6, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison.

http://teachingamericanhistory.org/convention/debates/0806.html

4. The provision Col. Hamilton was referring to:

"Every member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen ***in*** the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen." **August 6, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison.

http://teachingamericanhistory.org/convention/debates/0806.html

The provision would read, under Hamilton's suggestion (citizenship and inhabitancy):

"Every member of the House of Representatives shall be of the age of twenty five years at least; shall have been a citizen ***in*** the United States for at least three years before his election; and shall be, at the time of his election, an inhabitant of the State in which he shall be chosen."

Therefore, the rule of naturalization has to do with residency within a State of the Union.

Also, there is the following:

"VII

Sect. 1. The ***Legislature of the United States*** shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

To establish an uniform rule of naturalization throughout the United States." **August 6, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison.

http://teachingamericanhistory.org/convention/debates/0806.html

5. The provision Mr. Madison was referring to:

"Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen ***in*** the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen." **August 6, 1787**, Notes of Debates in the Federal Convention of 1787, James Madison.

http://teachingamericanhistory.org/convention/debates/0806.html