



Written by [Selwyn Duke](#) on February 10, 2017

Trump Could Simply Ignore Court's Order Halting Travel Ban

Does our current status quo make our Constitution a suicide pact? Thomas Jefferson certainly said as much, warning that accepting judicial supremacy would make our founding document just that, a *felo de se*, as he [put it](#) in Latin.

Acceptance of judicial supremacy, by the way, is precisely why President Trump's temporary ban on immigration from seven Muslim-majority nations is on hold. Imagine that, Alexander Hamilton [wrote](#) in *The Federalist*, No. 78 that the judiciary is the "least dangerous" branch of government because it "has no influence over either the sword or the purse," yet it's trumping the man with the sword, the president. But does it have to be this way?



No, Trump could simply ignore the court ruling suspending his ban.

Outrageous!? Unconstitutional!? Actually, it's wholly constitutional.

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In his dissent from the 2015 *Obergefell v. Hodges* marriage ruling, late Justice Antonin Scalia warned that with "each decision ... unabashedly based not on law," the Court moves "one step closer to being reminded of [its] impotence." What did Scalia know about courts' power?

That it's basically an illusion.

Let's do a civics quiz. Why does the legislative branch have the power to make law? Why does the executive branch (presidency) have the power to enforce law? The answer in both cases is because the Constitution grants it.

Okay, now how is it that the judiciary has the "power" to rule on law and have its decisions constrain not just its own branch, but the other two as well? How have the courts become king? Because the Constitution grants ... no, stop. It's *not in the Constitution* — *anywhere*.

Rather, this "power" was declared by the courts themselves, most notably in the 1803 *Marbury v. Madison* decision.

That's right, the Supreme Court gave the Supreme Court the supreme power to have the final say on laws' meaning.

It's a great con if you can pull it off.

The point is that the judiciary enjoys this power at the *executive branch's pleasure*. As soon as the latter says, to paraphrase Andrew Jackson, "The courts have made their decision; now let them enforce it," that power goes bye-bye. The judiciary is reminded of its impotence.



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So it isn't just that the courts lack the sword or purse, the possession and exercise of which could simply amount to might making right. They also have no constitutional claim to judicial supremacy. In fact, the power is a violation of everything for which America stands.

Jefferson explained why in 1820, [writing](#) that "to consider the judges as the ultimate arbiters of all constitutional questions" is "a very dangerous doctrine indeed and one which would place us under the despotism of an Oligarchy." This is where we are now, and have long been — suicide-pact territory. The will of a nation 320-million strong is expressed through its duly elected representatives and laws are passed....

And then that will is thwarted by five black-robed lawyers in a central-government tribunal.

Does this sound like a government of, by and for the people to you?

As time has worn on, the judiciary has become increasingly brazen, issuing rulings more and more distant from the Constitution. This is no surprise. As Jefferson put it, "Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privileges of their corps."

They even conjure up rationalizations justifying this power and privilege. For example, they long ago invented, out of thin air, the concept of the Constitution as a "living document" that can be interpreted to "suit the times." Yet since the interpretations so often conflict with popular will, the only common thread is that they suit the judges.

These esteemed jurists then put a veneer of legitimacy on their violation of law and duty by assigning themselves an intellectual-sounding designation. "Why, we're not constrained by a 200-year-old piece of parchment like those knuckle-dragging originalists," they say, "We're 'pragmatists'!"

To understand how outrageous this is, consider an analogy touched on by Chief Justice John Roberts when, during his confirmation hearings, he [said](#) his job was only "to call balls and strikes." Expanding on this, judges can in fact be thought of as baseball umpires, while the game's ruling body is the legislature and the rule book is the Constitution. Now, what if an umpire considered the rule book living and said, "With the great pitchers in these times, three strikes are insufficient; I'm giving the batter four strikes"? What if he then stated, "I'm not abdicating my duty. I'm a pragmatist!"

Would this be taken seriously? Or would he be laughed off the diamond?

Obviously, it's the job of the ruling body to alter the rules if necessary. Likewise, there is a lawful way to make the Constitution "live": the Amendment Process. It's long and difficult, and this ensures that before a change is made, a majority of the people agrees. This brings us to the problem with it — from the judiciary's perspective:

Judges can't control it.

So they usurp the people's power with a wink and a nod. They must be stopped.

There's more than one way to do this. Another little known fact is that Article III of the Constitution grants Congress the power to limit the jurisdiction of federal courts below the Supreme Court and the appellate jurisdiction of the latter. In other words, Congress could simply have prevented federal courts below the SCOTUS from ruling on immigration (and other issues) to begin with and the SCOTUS from reviewing lower-court decisions on those issues.

Congress also has the power under Article III to eliminate any and every federal court, except for the



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SCOTUS. So it could have made the U.S. Court of Appeals for the Ninth Circuit — a bench of fools now reviewing Trump’s immigration ban — disappear long ago.

Yet this would require that our cowardly politicians take a real stand on a contentious issue. They’d rather that judges, who don’t have to be re-elected, make the tough decisions. They can then pretend they did all they could and say, “The courts have ruled. The law’s the law!”

So is it any surprise the courts are going rogue? “Absolute power corrupts absolutely,” as Lord Acton warned. And how can we have a balance of power among the three governmental branches, as the founders intended, when two branches refuse to exercise their power?

I’ve heard it said that if the president ignored the courts, it would spark a constitutional crisis. Newsflash: When a branch of government is continually trampling the rights of others and violating the Constitution, we’re *already in a constitutional crisis*. Showing the judiciary its impotence isn’t the disease — it’s the cure.

Only power neutralizes power. It’s shocking how we’ve betrayed the letter and spirit of our nation’s founding and have allowed the courts to run amok. We can continue drinking the judicial-supremacy Kool-Aid and committing national suicide, or we can drain the swamp infested with black-robed tyrants. It’s impotence for them — or irrelevancy for us.

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