

**Prof. Tuan Samahon**

**"The Trump 'Travel Ban' Executive Order in U.S. Constitutional and Statutory Perspective"**

Americans are prone to falsely believe the U.S. Constitution and federal statutes magically condone only righteous, morally sound policy and (of course) condemn all unjust, immoral, racist, xenophobic and misguided policies. They are terribly mistaken as a historical matter. A long line of regrettable U.S. constitutional and statutory precedent, including the Chinese Exclusion Cases, justifies very broad federal power to close U.S. borders, including for malign reasons -- particularly where Congress has authorized it and delegated substantial discretion to the executive branch. Trump's Executive Order 13769 was terribly flawed in its process, delivery and execution, but with a few notable exceptions, the order enjoys a substantively solid constitutional and statutory basis. By contrast, the U.S. Court of Appeals for the Ninth Circuit's panel decision in *State of Washington v. Trump* suffers from fundamental and significant doctrinal shortcomings in its effort to right a perceived moral wrong. Given a forthcoming revision of the Executive Order will address the principal earlier legal flaws, it will be up to the American public to recognize that "constitutional" and "legal" in the field of immigration law frequently do not equate with just, moral, humane or right. Only by acknowledging the ongoing vitality of some ugly precedents in American immigration regulation can the public take a step forward by amending the Immigration and Nationality Act and (perhaps too) the constitutional understanding on which the Act stands.