

2017

President Trump and Respect for Law

Richard H. Chused



PROPER(TY) THOUGHTS

RICHARDCHUSED.ORG

President Trump and Respect for Law

January 30, 2017

As this semester began I taught materials in both Civil Procedure and Property related to the authority and power of courts to enforce their judgments. In Civil Procedure, the focus was on the law of contempt. We read the famous case of *Walker v. Birmingham*, 388 U.S. 307 (1967). A state court judge issued an *ex parte* injunction in 1963 ordering Rev. Martin Luther King, Jr. and others to stop organizing demonstrations in downtown Birmingham demanding desegregation of facilities and employee rosters by local business establishments and encouraging black citizens in the city to boycott white owned businesses. King and the others did not obey the order, which was served not long before the next demonstration, scheduled for Good Friday, was set to begin. They were cited and punished for contempt of court and the United States Supreme Court upheld the results despite later finding that the statute underlying the injunction was unconstitutional under the First Amendment. The duty to obey a court order took precedence even over the illegality of the underlying legal rule.

In property we read the equally famous Cherokee cases: *Cherokee Nation v. Georgia*, 30 U.S. (5 Peters) 1 (1830) and *Worcester v. Georgia*, 31 U.S. (6 Peters) 515 (1832). These disputes raised challenges to the authority of the State of Georgia to enact laws taking over management and control of the Cherokee Nation reservation in Northwest Georgia. Though the Supreme Court invalidated the Georgia statutes, President Andrew Jackson, together with the Governor of Georgia and other public officials, ejected the Cherokees and other southeastern tribes, sending them to Indian Country in Oklahoma during a cold, winter, death march now known as the Trail of Tears. It was the only instance I'm aware of when a Supreme Court judgment was totally frustrated by the actions of a President of the United States.

In both cases, I discuss with my classes the limited authority of the federal courts to enforce their judgments without the concurrence of the Executive Branch and recite other settings in which the question was publicly raised as to whether the President would obey a Supreme Court decree. The most obvious examples are the Nixon Tapes Case,^[1] the Steel Seizure Case,^[2] and the School Desegregation Cases.^[3] In all three settings, the Court's orders were obeyed—Nixon turned over the tapes; Truman promised to and did abide by the results in the Steel Seizure Case; and President Eisenhower, after some hesitation, did send in the National Guard to desegregate schools in Little Rock. In short, not since the early nineteenth century has any President declined to follow an order of the federal courts.

Little did I know when I taught these cases that the same issue would arise so soon after Donald Trump's inauguration. But the new President's immigration executive order issued on Friday, January 27 limiting entry into the United States from seven countries^[4] was quickly greeted by court orders limiting the order's scope. And, it appears, various federal enforcement agencies in the Executive Office declined to obey the decrees at several international airports. The Executive Order,

the judicial actions, and the apparent disobedience are stark reminders of the fragility of a national consensus based on respect for the independence of the federal courts, and on a sense of responsibility exercised by Presidents for almost two-hundred years. We have quickly been confronted with the possibility of a Constitutional Crisis arising from the actions of a President untethered by long accepted understandings of the underpinnings of a Constitutional Republic. While recent events created an obvious teaching moment for me, it arose in deeply disturbing ways. Hearing of intended spouses with newly obtained visas being barred from flights to their weddings, of émigrés who have waited for years for their visas having them suddenly voided, or of long-term resident aliens detained left me in tears. Many of my students are immigrants, children of immigrants, or relatives of immigrants. While everyone in my classes except for Native Americans is a descendant of immigrants or imported slaves, the deep pain in the faces of many of them as I spoke of these events is a powerful reminder of the fragility of our present cultural life and a challenge to all teachers to open their hearts and minds to the plights of those sitting in our classrooms. My life as a teacher has been dramatically altered and challenged by the stroke of a President's pen. When all of my students and I will feel whole again is unknown.

[1]. *United States v. Nixon*, 418 U.S. 683 (1974).

[2]. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

[3]. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Cooper v. Aaron*, 358 U.S. 1 (1958).

[4]. Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen. None of these countries was the home base of a person committing a terrorist act in the United States leading to death. A few people have been arrested and convicted of being involved in planning such acts. Other countries not included in the President's list have been the source for most acts leading to death: Saudi Arabia, United Arab Emirates, Egypt, and Lebanon.